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United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

In Five Volumes

VOLUME III

Pages 999 to 1465

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

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PAUL F. O'BRIEN,
CLERK

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of, Order of the National Labor Relations Board**

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(Testimony of E. H. Baldwin.)

Proceedings

Trial Examiner Myers: Are you ready?

Mr. Martin: Yes, sir.

Mr. Van Dusen: Yes, we are ready, Mr. Examiner.

E. H. BALDWIN

resumed the stand and testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Van Dusen) Mr. Baldwin, you were here, weren't you, yesterday while Mr. Owens testified? A. Yes, sir.

Q. And did you hear Mr. Owens testify that when the boat was at Port Arthur that after the hose was connected up to the pump the boatswain had started to go forward for something, and he said that you were calling to the ordinary seamen to come and help open some valves. What is done about opening the valves? A. What is done?

Q. Yes, sir.

A. In this particular instance he was talking about, it happened in Bayonne, we were discharging.

Q. You were discharging?

A. Yes, sir. And when we hook up our hose and get ready to do our discharging, opening those valves comes directly under the supervision of the chief mate aboard any tanker. To the best of my knowledge, the chief mate supervises the [1192]

(Testimony of E. H. Baldwin.)

opening of those valves, and the second mate has nothing to do with it.

Q. Why is that?

A. Because the chief mate is responsible for the cargo, for loading it and discharging it, and he supervises the job. He shows the men which valves to open, and he watches while they open them, to be sure they open the right valve.

Q. Now did you hear Mr. Owens testify that the boatswain asked if he wanted him to help, and he said that you remarked: "We don't need any of those rank and filers. We can get along without them." A. No, sir, nothing like that.

Q. Did you make any such statement?

A. I know nothing about it.

Q. Now, Mr. Baldwin, do you have anything at all to do, as second mate, with the hiring of men for the ship? A. No, sir.

Q. Who does that? A. The chief mate.

Q. How is that done?

A. Well, whenever there are men needed the chief mate goes to the master and tells him how many men he needs; and then he is referred to the shipping master from the captain. The captain tells him to go see whoever he is to get the men from.

Q. Who finally selects the men, decides what men are to go [1193] on the ship?

A. The chief mate notifies Mr. Myers the men who are needed on the ships at Port Arthur.

Q. Do they report to the captain?

(Testimony of E. H. Baldwin.)

A. When the men come aboard they first report to the chief mate.

Q. They first report to the chief mate?

A. Yes, sir.

Q. And then do they report to the captain?

A. As a rule, they do. The captain looks them over.

Q. When the captain is not there, and the chief mate is not there, and the second mate, they report to the mate on watch? A. Yes, sir.

Trial Examiner Myers: And the mate on watch does what? A. Well, he accepts them.

Q. If they are acceptable, is that right?

A. Yes, sir, if they are acceptable.

Q. And then he tells them either to go to work or go to bed, or whatever he has for them to do?

A. Yes, sir.

Q. And they are accepted? A. Yes, sir.

Q. And it doesn't go to the captain, if he is not around?

A. No, if he is not there, no, sir; the mate on watch. [1194]

Mr. Williams: Mr. Examiner, I want to note an exception. The respondent objects and excepts to the Board cross examining the witness on direct examination. We would like to have the record show that.

Trial Examiner Myers: I just wanted to clear this up so I would not have to go back and clear it up later.

(Testimony of E. H. Baldwin.)

Mr. Williams: We have no objection to it on cross examination, but we do object on direct examination.

Trial Examiner Myers: That is the only time, as we go along. He said before it was up to the captain. I want to be sure it is all in at one place so that when I read the testimony I will get it.

Q. (By Mr. Van Dusen) Can the captain refuse to take a man sent up by Mr. Meyer?

A. Yes, sir, he has a right to do that.

Q. Now do you have any authority, as second mate, to get rid of a man or to discharge him?

A. No, sir, I haven't any such authority.

Q. Who has that authority?

A. The chief mate and the captain.

Q. Can they refuse to sign up any man that they desire?

A. They have the privilege to refuse to sign them up.

Q. At the termination of the articles?

A. Yes, sir.

Q. During all the period in question did you at any time [1195] discriminate against any employees or any seamen because of union affiliation or activity?

A. No, sir, never.

Q. Did you discriminate between Mr. Rosen and Mr. Blasingame?

A. No, sir.

Q. Did you at any time?

A. No, sir.

Mr. Van Dusen: That is all.

(Testimony of E. H. Baldwin.)

Cross Examination

Q. (By Mr. Martin) Mr. Baldwin, do you have a radio in your room? A. In my room?

Q. On the boat? A. No, sir.

Q. Do you customarily read the newspapers?

A. At times, yes, I have read newspapers.

Q. Do you make it a practice?

A. No, sir, I don't make it a practice. Very seldom do I ever buy a newspaper.

Q. Do you try to keep up on shipping news?

A. No, sir; never was interested.

Q. It is not important for a man who aspires to greater heights to read newspapers and shipping news?

A. No, sir, I am never interested in it. [1196]

Q. Would you say mates are not generally interested in shipping news?

A. All I can refer to is myself.

Q. And how many years have you been at sea?

A. Fourteen years.

Q. During that time have you formed an opinion about whether there are mates that know anything about shipping news?

A. No, sir, I don't know anything about the other men.

Q. How long have you been at sea?

A. Fourteen years.

Q. Continuously, most of the time?

A. Continuous service.

Q. Were you on the sea in 1935?

(Testimony of E. H. Baldwin.)

A. Yes, sir.

Q. 1936? A. Yes, sir.

Q. 1937? A. Yes, sir.

Q. And thus far in 1938? A. Yes, sir.

Q. While you are on the sea do you talk to men generally on your boat?

A. I have talked to them, yes, sir. [1197]

Q. Do you ride along and talk to them?

A. Not as a habit, I don't go out and talk to them.

Q. You don't?

A. I don't make a habit of it, because it is not allowed, to go out and mingle with the crew.

Q. If a strike were going on would you be apt to hear about it?

A. Sure I would hear about it.

Q. You would probably hear about it?

A. Yes, probably I would.

Q. Did you testify yesterday, Mr. Baldwin, that you were raised up from the ranks?

A. Yes, sir.

Q. What does that mean?

A. Came up from an ordinary seaman.

Q. Then you understand the problems of the ordinary seamen? A. Yes, sir.

Q. You do?

A. I was an ordinary seaman myself.

Q. You sympathized with him?

A. Sympathized with the ordinary seamen?

Q. Yes. A. At present?

(Testimony of E. H. Baldwin.)

Q. Yes.

A. I don't sympathize with anybody.

Q. You don't sympathize with anybody? [1198]

A. No, sir.

Q. Just a hard, crusty mate?

A. I just sympathize with myself. That is all I do, for myself.

Q. Aren't you in charge of the men on the boat?

A. No, sir, I am not in charge of them.

Q. When the mate is off aren't you in charge?

A. I am in charge whenever it is left up to me to be in charge.

Q. If the mate gives you a job to do are you in charge of the men doing that job?

A. If he gives me a bunch of men to go out and do a job, I am in charge.

Q. Don't you have any sympathy for those men when they are working for you? A. No, sir.

Q. None at all?

A. No, sir. There is no reason for it.

Q. No reason to have sympathy?

A. No, sir. Each man does his work he is doing the same as I do mine.

Q. Do you have some human sympathy for them?

A. A certain amount of human sympathy.

Q. Are you friendly towards the men on your boat?

A. Yes, sir, everybody. [1199]

Q. Friendly toward the ordinary seamen?

(Testimony of E. H. Baldwin.)

A. Yes, sir, everybody.

Q. And toward the A.B.'s?

A. Yes, sir, toward everybody.

Q. And you are friendly with them when they are working for you? A. Sure.

Q. Do you chat with them?

A. I say a few words to them at various times when necessary.

Q. Try to be democratic?

A. No, sir; say a few words; ask them a question.

Q. Do you ever advise the men?

A. No, sir.

Q. Never advise the men?

A. Never advise the men.

Q. I thought you said yesterday you used to tell Blasingame all about your life, how successful you were, and make suggestions to him. Isn't that advice?

A. I talked to Blasingame. He asked me questions, and I asked him questions. He would ask me questions with regard to the work I had done, where I had come from, and ships I had been on, and how long I had been going to sea, and all that.

Q. What else? [1200]

A. That is all, to my knowledge.

Q. How long were you on the 12 to 4 watch? How many days or months?

A. Well, the length of time, I would say, roughly, about two months.

(Testimony of E. H. Baldwin.)

Q. That is all you talked about, four hours every night for two months?

A. We didn't talk continuously; just a word now and then.

Q. You didn't talk any more than that?

A. Because the master doesn't permit it.

Q. In general, would you say that you do not talk with the men on the boat right along?

A. I say a few words maybe.

Q. Do you listen to what they say?

A. Sure, if they say anything I listen to it, yes, sir.

Q. You don't close your ears to what is happening?

A. No, sir.

Q. Now was there a strike in 1936?

A. To the best of my knowledge there was.

Q. Did you know it at that time?

A. Yes, sir.

Q. Who was striking?

A. To the best of my knowledge, it was sailors.

Q. The sailors were striking?

A. Yes, sir. [1201]

Q. All sailors striking?

A. I can't say about that. All I know, there was a strike.

Trial Examiner Myers: Tell what you know about the strike, in your own words.

A. The only thing I know, there was a strike going on among the sailors.

Q. Were you on a boat where they had a strike of the sailors?

(Testimony of E. H. Baldwin.)

A. Yes, sir, I was on a ship.

Q. Tell us about that, what happened.

A. What I know about it, I know they were on a strike, and that is all.

Q. Who was on strike, able-bodied seamen, engineers?

A. As far as I know, it was the seamen.

Q. (By Mr. Martin) Just the A.B.'s?

A. No, sir, the A.B.'s, ordinary seamen, quarter-masters; only the men that sail in the deck department, to the best of my knowledge.

Q. Was your boat on strike?

A. Yes, there were men left my ship on account of the strike.

Q. Were you working?

A. Yes, sir, I was working.

Q. Did you have a full crew during the strike on your boat? A. Yes, sir. [1202]

Q. All the time during the strike?

A. Yes, sir.

Q. When the strike started did any of the men get off your boat?

A. Yes, sir, there were some of them got off.

Q. How many?

A. I couldn't dare say how many got off, but I know there were some left.

Q. Did you fill the vacancies?

A. Yes, sir, they were refilled.

Q. Did you talk with any of the new men that came on? A. No, sir.

(Testimony of E. H. Baldwin.)

Q. You didn't talk with the new men?

A. No, sir. As a rule, I don't say anything to them when they first come aboard the ship.

Q. Did you have any discussions with the other officers of the boat about the new men?

A. No, sir.

Q. What the new men were filling the positions?

A. No, sir, I had no discussions.

Q. Do you remember how long the strike lasted?

A. No, sir, I don't remember.

Q. Did you know at the time?

A. No, sir, I don't remember the time when it was in there, when it began. [1203]

Q. You don't know? A. No, sir.

Q. Did you ever see any pickets on the land or on the shore?

A. I saw pickets, yes, sir.

Q. Did you have any discussions with any officers of the Marine Department of The Texas Company during the strike? A. No, sir.

Q. Never talked with a one of them?

A. No, sir.

Q. You never talked with Mr. Meyer?

A. No, sir.

Q. Never talked with Mr. Hand?

A. I talked with Mr. Hand.

Q. You did have a discussion?

A. No, sir. I talked to him.

Q. Did you ever talk with Mr. Meyer?

A. No, sir.

(Testimony of E. H. Baldwin.)

Q. During the strike? A. No, sir.

Q. Of several months?

A. I never talked to him.

Q. Did you ever talk with any of the other officials during the strike? A. No, sir.

Q. You never talked with the shipping master at Galveston? [1204] A. No, sir.

Q. Philadelphia? A. No, sir.

Q. Or New York? A. No, sir.

Q. How about Captain Rosen?

A. No, not during the strike.

Trial Examiner Myers: Did you ever go ashore during the strike?

A. Yes, sir. I went ashore in Port Arthur.

[1205]

Q. And passed through the picket line?

A. Yes, sir, I drove through.

Q. (By Mr. Martin) Tell us what you talked to Captain Hand about?

A. It was on company business. I do that every trip, reporting different things.

Q. Did the company business know there was a strike in existence at that time?

A. I don't know, sir, whether they did or not.

Q. Well, you passed through the picket lines. Did any of the pickets talk with you?

A. No, sir. I was in my car.

Q. In your car? A. Yes, sir.

Q. Anybody with you when you passed through the picket line? A. Yes, sir, my wife.

(Testimony of E. H. Baldwin.)

Q. Anybody else?

A. No, sir, nobody else.

Q. Why didn't you walk through the picket line?

A. Because I have got my own car to ride in.

Q. Does your car meet you at every port the ship stops at where there are pickets?

A. No, sir, only at Port Arthur.

Q. How about pickets in New Orleans?

A. I was not in New Orleans. [1206]

Q. How about the pickets in Philadelphia or Claymont? A. I was not in Claymont.

Q. How about the pickets anywhere except Port Arthur?

A. I was not ashore any place except Port Arthur.

Q. During the whole trip? A. No, sir.

Q. Where did the ship go when it left Port Arthur?

A. We only have four places. One is to New York, Baltimore, and up the Hudson River, and to Providence, Rhode Island.

Q. How about those places?

A. I never went ashore there. I had no reason for going ashore.

Q. Do you remember that clearly?

A. I remember that clearly.

Q. Was the strike any bother to The Texas Company? Did The Texas Company know the strike was on at all?

(Testimony of E. H. Baldwin.)

A. I don't know, sir. I guess they did.

Q. Did you?

A. I knew the strike was on, yes, sir.

Q. Were you mate at that time?

A. I was second mate at that time.

Q. Is that a responsible position on the boat?

A. To a certain extent, yes, sir.

Q. Are you expected to keep informed of activities of seamen? [1207]

A. No, sir, I am not informed of activities of seamen.

Q. You are not? A. No, sir.

Q. If the Captain and mate are off the boat are you responsible for the ship?

A. Yes, sir, I am.

Q. Are you responsible officer of the ship at all times? A. No, sir, not at all times.

Q. Just when you are in charge?

A. Yes, sir, when I am in charge.

Q. Do you keep informed when you are in charge of the ship?

A. Yes, sir. Whenever the master goes off the boat and when the chief mate is not there, it is my duty.

Q. When you are in charge of the ship do you keep informed on ship news and where other ships are, and where their captains and mates are, and where their seamen are? A. No, sir.

Q. You don't ever keep track of those things?

A. No, sir.

(Testimony of E. H. Baldwin.)

Q. Even though you are responsible officer of the ship? A. No, sir.

Q. Did you say yesterday that you didn't know what rank and file means?

A. No, sir, I don't know.

Q. During 1936 while the strike was on did you know what [1208] rank and file meant?

A. No, sir.

Q. Do you believe you could find another seaman on the Atlantic or Pacific coast who does not know what rank and file means?

A. I don't know.

Q. Would you rank yourself among the more ignorant seamen on the waters?

A. No, sir. I was not interested in the union, in the strike.

Q. Whether you were interested or not would it be possible for you to rank yourself as one of the more ignorant sailors on the sea?

A. No, sir, I would not rank myself as an ignorant man.

Q. Do you think you could find any other sailor of ordinary intelligence who doesn't know what rank and file means?

A. I don't know.

Q. You have no opinion on that?

A. No opinion whatsoever.

Q. Are you a member of a union?

A. No, sir.

Q. Have you ever been a member of a union?

(Testimony of E. H. Baldwin.)

A. No, sir.

Q. Why not? A. I had no desire. [1209]

Q. No desire?

A. When I was a man coming up in the fore-castle there was no union.

Q. How about the I. S. U.?

A. No, sir; I was not in the fore-castle then.

Q. When did the I. S. U. come into existence?

A. Whenever I first heard about it——

Trial Examiner Myers: When did you first hear of the I. S. U.?

A. Three or four years ago, and that was hear-say.

Q. Was that after you became a mate you heard of the I. S. U.?

A. Yes, sir; heard men talking about it; just overheard their conversations.

Q. (By Mr. Martin) Overheard conversations?

A. Among the sailors, yes, sir.

Q. Did you ever hear about the N. M. U. among the sailors? A. Yes, sir.

Trial Examiner Myers: Did you ever hear of the M. M. P.? A. No, sir.

Q. Never heard of the outfit called the M. M. P.?

A. No, sir.

Q. That is your captain's——

A. Yes, sir, Mates and Master's Department.

Q. (By Mr. Martin) How come you are not a member of that? A. I have no desire.

[1210]

(Testimony of E. H. Baldwin.)

Q. Why didn't you have any desire to?

A. I just had no desire. I never had any desire to belong to the union.

Q. What do you think of the Master, Mates and Pilots?

A. I don't know anything about them.

Q. What do you think of the M. E. D.?

A. I don't know anything about it.

Q. What do you think of the N. M. U.?

A. I don't know anything about it.

Q. Did you ever hear of it?

A. I have heard of it.

Q. Never did? A. I heard of it.

Q. Do you know any members of the N. M. U.?

A. No, sir.

Q. I thought you said yesterday you learned in New York that Rosen was a member of the N. M. U.?

A. No, sir, I didn't know it.

Q. Didn't you say that yesterday?

A. No, sir.

Q. Do you know now he is a member of the N. M. U.?

A. It was never proven to me.

Trial Examiner Myers: Nobody ever told you that he was a member of the N. M. U.?

A. No, sir. [1211]

Q. No one ever did? A. No, sir.

Q. (By Mr. Martin) Mr. Baldwin, what is a radical?

A. A radical?

Q. Yes. A. I don't know. I couldn't answer.

Q. You don't know what a radical is?

(Testimony of E. H. Baldwin.)

A. No, sir.

Q. Could you unburden yourself to voice an opinion?

A. I didn't form any opinion.

Q. What is a politician? A. A politician?

Q. Yes. A. I couldn't answer that.

Q. You don't know that either?

A. I couldn't give you the correct answer for it.

Q. What is a locomotive? A. A locomotive?

Q. Yes. Are you trying to answer?

A. A locomotive is a train; to the best of my knowledge, an engine run by steam.

Q. A train? A. An engine run by steam.

Q. Mr. Baldwin, what is a union?

A. To the best of my knowledge it is a bunch of men formed into one group. [1212]

Q. For what purpose?

A. To organize, form in one group.

Q. For what purpose?

A. For getting better conditions, and where they can all stick together.

Q. Is that a good idea? A. What is that?

Q. To get better conditions? A. It may be.

Q. Do you approve of it? A. A union?

Q. Yes. A. I approve.

Q. Why don't you join?

A. I have never joined it.

Q. But you approve of it for everybody else?

A. I have no desire to join a union.

(Testimony of E. H. Baldwin.)

Q. Do you approve of a union for everybody else but yourself?

A. It is immaterial to me.

Q. It is immaterial to you? A. Yes, sir.

Q. For what percentage of men, other than yourself, do you approve of a union? You said you approve of it.

A. Sure, if they want to belong to a union, that is their [1213] privilege. I have nothing against it.

Q. Mr. Baldwin, did you ever hear of a salon mess? A. Salon mess?

Q. The salon mess room?

A. Yes, we have a salon mess room.

Q. Tell us what happens in there.

A. That is where the officers chat.

Q. Who eats there?

A. The captain and the three mates, and the chief engineer and his three assistants, and the radio operator.

Q. Did you ever hear of a P. O. mess?

A. We have a P. O. mess aboard.

Q. What does that mean?

A. Petty officers' mess.

Q. What happens in that place?

A. He waits on the table.

Q. Who waits on the table?

A. Serves meals at the petty officers' mess.

Q. What happens in that place?

A. That is where all men eat, the crew, sailors, firemen and petty officers.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: Petty officers?

A. Yes, sir, petty officers too, on this particular ship.

Q. (By Mr. Martin) Is that on your boat?

A. Yes, sir. [1214]

Q. Is that true on all company boats?

A. They don't all eat in one mess room.

Q. On Texas Company boats?

A. They don't all eat in one mess room except on this ship.

Q. On some of the boats there are three mess rooms? A. Yes, sir.

Q. Who eats in them?

A. They have the salon mess for the officers, and the petty officers mess for the petty officers, and a mess for the crew, the sailors, firemen and wipers.

Q. Who eats in the petty officers' mess?

A. Water tenders, pumpmen, quartermasters and the boatswain.

Q. Who eats in the crew's mess room?

A. The sailors, the firemen and the wipers.

Q. What you said about these three mess rooms applies, does it, to all Texas Company boats?

A. Yes, sir, the majority of them have got three mess rooms, yes, sir. [1215]

Q. Mr. Baldwin, when the boat or any boat generally of The Texas Company gets to Port Arthur are the men excused as soon as the boat docks?

A. No, sir, they are paid off some time during the day.

(Testimony of E. H. Baldwin.)

Q. A fellow who works on the, say, 8:00 to 12:00 shift; take an ordinary seaman who works the 8:00 to 12:00 shift; is he through at 12:00 o'clock?

A. On the 8:00 to 12:00 watch? He is through at 12:00 o'clock.

Q. Can he leave the boat?

A. At sea he is finished, but in port he has to work until 5:00 o'clock in the afternoon, provided he is not given time off, but his day ends at 5:00 o'clock in the afternoon on the day of arrival in port.

Q. Is that true of other members of the deck force?

A. They are all finished at 5:00 o'clock.

Q. The boatswain? A. The boatswain.

Q. The quartermaster?

A. The quartermasters, they stand regular watches. There are three men and there is one man on each watch.

Q. How about the mates?

A. The mates? What do you mean? Now? In Port Arthur here?

Q. Yes.

A. Well, the mates are finished at 4:00 o'clock in the [1216] afternoon at the present time. We have a relief mate.

Q. Did you testify yesterday, Mr. Baldwin, that no complaints were ever made to Captain Peterson and Chief Mate Rosen regarding overtime while you were on the "California"?

(Testimony of E. H. Baldwin.)

A. While I was mate or second mate?

Q. While you were second mate.

A. While I was second mate? If there were I don't recall, except one instance and that was up in the shipyard that time.

Q. If any complaints had been made to them, would you know?

A. Not necessarily. Unless I was told by the master or the mate, I would never know anything about it.

Q. Mr. Baldwin, will you tell us a little bit about how work on a boat is done. Do I understand that there are shifts?

A. Yes, sir, there are three watches.

Q. Three watches? A. Yes, sir.

Q. Now what do the various watches do during the periods of the day?

A. All right. Beginning at 8:00 o'clock in the morning—Do you want to know how many turn to at 8:00 o'clock and what they do?

Q. Yes, sir.

A. There are three men on the 8:00 to 12:00 watch. [1217]

Q. Who are they?

A. There are two A. B.'s and one ordinary seaman.

Q. Yes.

A. And there are two maintenance men and the boatswain.

Q. What is the job of the maintenance men?

(Testimony of E. H. Baldwin.)

A. They are ordinary seamen, but they are signed on as maintenance men.

Q. Are you talking about the "California"?

A. Talking about the "California", yes, sir.

Q. Well, what does a maintenance man get paid?

A. They get \$65.00, to the best of my knowledge; to the best of my recollection.

Q. What does that mean?

A. \$65.00 a month.

Q. Well, what does an ordinary seamen get paid?

A. To the best of my recollection, it is \$65.00 a month.

Q. \$65.00 a month? A. Yes, sir.

Q. What does an A. B. get paid? A. \$85.00.

Q. What does a boatswain get paid?

A. The boatswain? He gets \$100.00.

Q. What does a quartermaster get paid?

A. \$87.50.

Q. What does a third mate get paid? [1218]

A. \$185.00.

Trial Examiner Myers: A month?

A. \$185.00 a month, yes, sir.

Q. (By Mr. Martin) What does the second mate get paid? A. \$210.00.

Q. What does a first mate get paid?

A. \$240.00.

Q. What does the captain get paid?

A. I can't answer that. I don't know, sir.

Q. You say on this 8:00 to 12:00 watch there

(Testimony of E. H. Baldwin.)

are two A. B.'s, an ordinary seaman and two maintenance men?

A. The maintenance men are not on watch. They work eight hours per day, but they all turn to at 8:00 o'clock in the morning.

Q. Now then what sort of thing would those men be put to doing between 8:00 and 12:00 o'clock in the morning?

A. Various jobs. Maybe chipping paint, chipping rust, washing paint, scrubbing decks, splicing.

Q. Do they usually finish the job they start?

A. No, sir, they never finish. A lot of times the job is not finished by 12:00 o'clock. It may be too big a job and they are not finished by 12:00 o'clock.

Q. Just don't have time to finish?

A. That is it. They don't have time to finish.

Q. Then who finishes it? [1219]

A. Well, as a rule, if you want to ask a man to finish up his own job, if it is a small job, you ask the man to come back for thirty minutes or an hour. That is the practice that is done. I have asked a man to do that.

Q. Customarily who carries on?

A. He comes back and finishes the job if it is a half hour or an hour.

Q. That is if the 8:00 to 12:00 watch doesn't get finished they come back for an hour or half an hour to finish?

A. If I ask the man to.

Q. I am talking about generally.

(Testimony of E. H. Baldwin.)

A. Oh, it is done a number of times.

Q. But generally do the men quit at 12:00 and a new shift come on?

A. A new shift comes on at 12:00.

Q. What do they do?

A. The same kind of work, chipping and washing paint.

Q. Carry on? A. Carry on, yes, sir.

Q. Then you say once in a while a man would be asked to finish the job he was on?

A. Yes, sir. He would be asked to finish a small job if it is only going to take a few minutes or a half hour or an hour. [1220]

Q. Does he get overtime for that?

A. No, sir. I give him time off if he asks for that. If he wanted overtime I would give it to him if he asked for it.

Q. If a man were doing a poor job on a certain piece of work that was not completed by 12:00 o'clock, would you be apt to call him back to finish it.

A. Sure, I would be apt to call him back.

Q. You would like to have him complete the job and do a thoroughly poor job?

A. To do the best he could.

Mr. Martin: What was the answer to that last question?

The Witness: What was the question?

Mr. Martin: Mr. Reporter, please.

(The last question and answer were read.)

Q. (By Mr. Martin) Now if he were doing

(Testimony of E. H. Baldwin.)

what you considered a poor job when he quit at 12:00 o'clock would you ask him to go back and finish the job?

A. Yes, sir, I would ask him to come back and complete his job.

Q. And you would call this same man back to finish a job even though it is a poor job, would you?

A. Yes, sir, I would call him back to finish his job.

Q. Even though at some future time you would have to give him time off for that?

A. If I call him back. [1221]

Q. And do you make it a practice on the boat of calling men back to finish a particular job and then giving the man time off later even though there are several other men available to finish the job so that you won't have to give the man time off later?

A. I don't make it a practice. I have done it two or three times to the best of my knowledge. [1222]

Q. How many years have you been a mate?

A. Ten years.

Q. And you have done that two or three times in ten years?

A. Two or three times, yes, sir.

Q. Why only two or three times in ten years?

A. That is the best of my recollection, two or three times.

Q. Well, if it were a regular thing you would do it more often, wouldn't you?

A. Yes, but the man, he doesn't have to come back. He would have the right to refuse to come

(Testimony of E. H. Baldwin.)

back. If I asked him to come back for thirty minutes, if he said he didn't want to come back, that would be all right.

Q. I didn't ask you what he said. I asked you how many times have you done that?

A. Two or three times.

Q. Two times in ten years?

A. Two or three times.

Q. And Mr. Rosen's case was one of those?

A. Yes, sir.

Q. Rather exceptional, isn't it?

A. Not exceptional.

Q. Merely three times in ten years, but no exception?

A. That is it; three times in ten years.

Trial Examiner Myers: Would you ask the men directly or would you ask the boatswain?

[1223]

A. I would ask him directly myself.

Trial Examiner Myers: You would?

A. Yes, sir.

Q. (By Mr. Martin) Mr. Baldwin, didn't I understand you to say yesterday that you take as a matter of course anybody that Mr. Hand or Mr. Meyers sends aboard the boat?

A. Yes, sir, we have never refused a man yet that they would send aboard the ship.

Q. Mr. Baldwin, what paper work do you do on board? A. What paper work do I do?

Q. Yes.

(Testimony of E. H. Baldwin.)

A. Well, I sign the crew on as a rule.

Q. What does that mean?

A. That is signing each and every man on the shipping articles.

Q. Is the captain there?

A. Sometimes he is there and sometimes he is not there.

Q. That means you sit at a desk and those men file by and sign their names?

A. That is right, sir. They file by and sign their names.

Q. Anything else at that time?

A. No, sir, nothing else at that time.

Q. And then what other paper work?

A. Then I have the deck abstract.

Q. What does that mean? [1224]

A. That is the activities of the ship; the cargo she has on board, the kind of cargo, the time we arrive at the dock and the time we leave and the number of tugs we have used coming in and going out of port, the weather reports from one passage to another. There is each officer's name, his license and his service and the draft of the ship and the distance covered from one port to another.

Q. Anything else?

A. And I have the crew list which I make up as second mate.

Q. What is that?

A. That has the name of each man we have on board, his age, his rating, whether he is married or

(Testimony of E. H. Baldwin.)

single, whether he is an American citizen or not a citizen and his nearest of relatives.

Q. Anything else?

A. That is all on the crew list and it shows you the new men that we ship, the men who were promoted, and the men who were discharged on the back of the crew list.

Q. Do you make out any other papers?

A. No, sir, that is all that I make out.

Trial Examiner Myers: You told us yesterday you made out some other papers.

A. No, that is all.

Trial Examiner Myers: The papers that you send to the New York office? [1225]

A. That is that crew list we were just talking about. I make that out.

Q. (By Mr. Martin) Did you do this same sort of work when the old form for coastwise shipping articles was in use?

A. Yes, sir, it was done.

Q. Will you tell us the columns that there are across the top of the old form?

A. I can't remember now just what all the columns were, but I remember some of them.

Q. What are some of them?

A. Some of them? The first is your name and your native state; where you come from or what country you come from. Then comes your age, your height and your complexion and then your wages, to the best of my knowledge, and then comes the place and time that the man was signed on and out

(Testimony of E. H. Baldwin.)

in the far column his nearest of relatives and his address.

Trial Examiner Myers: You left out his classification.

A. And there is his classification there too.

Trial Examiner Myers: That comes after the name?

A. Yes, the name and address over in the far corner.

Q. (By Mr. Martin) How about this conduct and character?

A. That is out beyond their address, the best I can remember.

Q. When did they start using this new form; this new red printed form for coastwise articles?

A. I can't recall whenever they started that.

[1226]

Q. About when?

A. Oh, I would say it is about a year ago or somewhere around that neighborhood. Between eight months and a year ago; something like that.

Q. In the fall of 1937?

A. I can't recall just what month it was; just how long it has been.

Q. How many years prior to then had you had charge of signing men on this old form of shipping articles?

A. Since 1935. Since September, 1935, is when I was assisting in signing on the crew.

Q. Two years, roughly?

(Testimony of E. H. Baldwin.)

A. Yes, roughly, two years.

Q. Every trip?

A. Yes, every trip that I was aboard the ship.

Q. Now during this time did you ever notice this column "Conduct and Character" on the articles?

A. I noticed it there, yes, sir.

Q. Then why did you express surprise yesterday when the Examiner pointed that out to you?

A. I wasn't surprised.

Q. Now during the time that you kept these articles was anything ever listed in that column?

A. No, sir, there was never anything listed in that column.

Q. Did you ever see anything listed in that column? [1227]

A. No, I never saw anything listed in that column.

Q. Mr. Baldwin, do you ever use the word "fired"?

A. No, sir, I never use the word "fired".

Q. In your whole life have you ever uttered the word "fired"? A. Oh, sure I have.

Q. You have? A. Yes, sir.

Q. During your years on the sea while you have been on a boat have you ever uttered the word "fired"?

A. Have I ever uttered the word "fired"? Yes, sir.

Q. Mr. Baldwin, where does a man who wants to

(Testimony of E. H. Baldwin.)

go to sea for the first time get his ordinary seaman's certificate?

A. He goes to the custom house.

Q. Where does he go in the custom house?

A. To the Commissioner; the Shipping Commissioner.

Q. The Shipping Commissioner?

A. To the best of my knowledge.

Q. Are you sure about that?

A. I wouldn't be positive. To the best of my knowledge he goes to the Shipping Commissioner.

[1228]

Q. Might it be somebody else?

A. It could be.

Q. Didn't you state definitely yesterday that he goes to the custom house?

A. He goes to the custom house, yes.

Q. Didn't you state yesterday that he goes to the shipping commissioner?

A. I said to the best of my knowledge he goes to the shipping commissioner.

Q. Are you sure you said "to the best of your knowledge"?

A. I wouldn't doubt it. Something to that respect.

Q. You are not sure about this?

A. I would say that he went to the shipping commissioner.

Q. You are not quite sure?

A. Well, I would say I was sure to the best of my knowledge.

(Testimony of E. H. Baldwin.)

Q. But are you positive? A. No, sir.

Q. Now, are you positive about everything else you have told me this morning? A. Yes, sir.

Q. You are quite positive? A. Positive.

Q. You are quite positive of everything you told Mr. Van Dusen yesterday? A. Yes, sir. [1229]

Q. But you are not positive about this?

A. No, sir.

Mr. Martin: That is all.

Trial Examiner Myers: Any redirect?

Mr. Van Dusen: Just a minute.

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Baldwin, if an ordinary seaman or an A. B. does a job badly, do you tell him it is a poor job?

A. Do I tell him if it is a poor job?

Q. If you think that a job that is done by an ordinary seaman or an A. B. is a poor job, do you ordinarily tell him it is a poor job?

A. Yes, sir, I would say that it was.

Q. If an ordinary seaman or an A. B. does a poor job over a long period of time, what do you do, if anything?

A. Well, if he couldn't do his work and everything you put him on, he was poor at or incapable of doing his work and all, I would just have to dismiss him if he wasn't capable of doing his job.

Q. Now you testified on cross examination that you never refused a man yet who was sent aboard

(Testimony of E. H. Baldwin.)

by Mr. Hand or Mr. Meyers. Are these men sent to you?

A. They are sent to the chief mate when they come aboard.

Q. Well, are they sent to you?

A. No, sir, they are not sent to me.

Q. Do you have the right to refuse them? You personally? [1230]

A. No, sir.

Q. Do you know of your own personal knowledge whether Captain Peterson ever refused a man?

A. No, sir. To my knowledge he never refused a man.

Q. Has he that right?

A. Yes, sir, he has that right, as far as I know.

Mr. Van Dusen: That is all.

Mr. Martin: That is all.

Trial Examiner Myers: Will you tell me what a log book is?

A. What a log book is?

Trial Examiner Myers: Yes.

A. A log book and what is in the log book is the activities of the ship. At the end of every watch, a man has to write up his log. He has to put his course down, the direction of his wind and the temperature of the air and the engine room generally calls up the revolutions and the temperature of the sea water. Then you put the weather conditions down in the "Remarks" column and the course that we steered for the day, if it is a true course, the latitude and the longitude and the true

(Testimony of E. H. Baldwin.)

speed and the weather conditions and the sea conditions and the cloud formations.

Trial Examiner Myers: What else?

A. And if the fire and boat drills are held and if there is any unusual weather, that is put in, and the draft of the ship leaving port and all the activities of loading the [1231] cargo in port and the discharging of the cargo and each officer's name is in it and the captain signs it. That is the smooth log, of course, and at the present time if a man leaves the ship, well it is entered in the log book.

Trial Examiner Myers: You mean "jump the ship"?

A. If he jumped the ship or if he left the ship on his own accord or anything, it is all put down.

Trial Examiner Myers: And if he is fired?

A. Yes, sir.

Trial Examiner Myers: How long has that been in effect?

A. Oh, I would say the last four months or five months, to the best of my knowledge.

Trial Examiner Myers: Since you got that letter from Captain Roney?

A. Since we got the letter, yes, sir.

Trial Examiner Myers: Would you say that was around the first of July of this year?

A. Roughly speaking. I couldn't refer back and say how long that was.

Trial Examiner Myers: You think it was about four months?

(Testimony of E. H. Baldwin.)

A. Four or five months. Maybe a little more.

Trial Examiner Myers: Did you ever see that letter from Captain Roney?

A. No, sir, I never saw that letter from Captain Roney. [1232]

Trial Examiner Myers: It was from Captain Roney, wasn't it?

A. Yes, it was from Captain Roney.

Trial Examiner Myers: What else do you put in the log book?

A. Well, the fire and boat drill, as I say.

Trial Examiner Myers: Well, I mean supposing a sailor was sent to the ship hospital, would that be in the log book?

A. Oh, yes, it would be in there that he left the ship for medical treatment.

Trial Examiner Myers: I mean in the ship hospital. Have you got a hospital?

A. Yes, sir, we have a ship hospital.

Trial Examiner Myers: If anybody missed a watch, would that be put in the log book?

A. No, sir, we wouldn't put that in; if a man missed a watch or didn't show up, we would put another man in his place to stand his watch.

Trial Examiner Myers: If a man came on board drunk, would you put that in the log book?

A. We wouldn't put that in the log book unless he was discharged from the ship.

Trial Examiner Myers: Now you tell us that quite frequently you spoke to Blasingame during the watch at [1233] night, isn't that right?

(Testimony of E. H. Baldwin.)

A. Yes, I spoke to him.

Trial Examiner Myers: He wasn't a very talkative fellow, was he?

A. Yes, he was about as much talkative as I am, I would say.

Trial Examiner Myers: What kind of fellow did you figure him out to be?

A. Well, to the best of my knowledge, he was all right.

Trial Examiner Myers: A nice, honest fellow?

A. Sir?

Trial Examiner Myers: A nice, honest fellow?

A. Well, I took him to be a nice, honest fellow.

Trial Examiner Myers: Truthful?

A. Truthful. [1234]

Trial Examiner Myers: Now you say that your brother first took you to sea, is that correct?

A. Yes, sir, my brother first took me to sea.

Trial Examiner Myers: What boat is he with now?

A. He is with the South Atlantic Mail, Savannah, Georgia.

Trial Examiner Myers: Was he ever with The Texas Company?

A. No, he has never been on a tanker in his life. He is an ex-navy man.

Trial Examiner Myers: What union does he belong to?

A. I couldn't say. I haven't been with him in five years.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: You shipped with him once?

A. I shipped with him in 1924.

Trial Examiner Myers: How long were you together?

A. We made a trip to Europe and back and that was about two months or two months and a half and then I was away from him about a year and a half and then I shipped back with him on a ship that he was on then.

Trial Examiner Myers: Whe union did he belong to?

A. I don't know.

Trial Examiner Myers: Did he belong to any union then?

A. If he did he never told me.

Trial Examiner Myers: Did you ever have any conversations with Gordon Rosen?

A. No, sir.

Trial Examiner Myers: You never spoke to him except [1235] in line of duty?

A. In line of duty, that is all.

Trial Examiner Myers: And that is the only conversation you had with him?

A. That is the only time, yes, sir.

Trial Examiner Myers: That is all.

Mr. Martin: One more question, Mr. Examiner.

Recross Examination

Q. (By Mr. Martin) Mr. Baldwin, have you ever taken a trip to Europe? A. Me? Yes, sir.

(Testimony of E. H. Baldwin.)

Q. Did you ever work on a trip to Europe?

A. Yes, sir.

Q. On a Texas Company boat?

A. No, sir.

Q. Have you ever worked as a mate on a trip to Europe?

A. No, sir.

Q. Do you know how the log on a foreign trip is kept?

A. Which? The official log or the ship's smooth log? Which? There is two different logs we have. We have the ship's log book, the smooth log, and we have the official log. There is two different books.

Q. Tell us about the difference.

A. Well, as I explained a minute ago about the ship's smooth log book, it is the activities of the ship at sea and in port. We write up our weather

[1236]

conditions and the course and the wind and stuff every four hours and then of course the fire and boat drills are entered in there, the time we go in the shipyard and dry dock and all that and the draft and the latitude and longitude of every noon position from one port to another and the draft of the ship and the name of the tugs that we used entering and leaving ports and the names of the officers.

Q. That is the ship's smooth log?

A. That is the ship's smooth log.

Q. What is the other called?

A. What?

Q. What is the other called?

(Testimony of E. H. Baldwin.)

A. The official log. That consists of every man's name, his rating, and if we have a slop chest, well, it is entered down there what he purchases from the slop chest.

Q. Are both of those the same on foreign and coastwise trips?

A. The ship's log is the same, but this official log is not used in that respect on the coast here. We don't have no slop chest and the drawing of money and that stuff is only put on an advance sheet.

Q. It is about the same otherwise? They are about the same otherwise, are they?

A. Yes, they are about the same. Each man is entered in [1237] this book and his rating and the amount of money he draws in foreign countries is put down there and the amount of stuff he gets from the slop chest, whether it is clothes or whatever it may be, and that is presented to the Shipping Commissioner when you return.

Q. Does a foreign log differ in any other respect from a coastwise log?

A. You mean the ship's log?

Q. No. I mean the official log.

A. The official log? Well, the official log that we are using now at the present time, the names of the crew is not in this log. It is only the draft of the ship when you are leaving port and entering port and the times that you hold fire and boat drill and in respect to that automatic fire alarm that we have aboard now, that is entered in the official log.

(Testimony of E. H. Baldwin.)

Q. Is that the same on foreign and coastwise?

A. It is the same. The books look identically the same. Of course I haven't examined the book. That is the master's book.

Q. They are kept the same?

A. To the best of my knowledge. As I referred to here, what is put in there is the draft of the ship and the fire and boat drills and everything.

Q. Now wait a minute. Let's start over. Tell me as simply [1238] as you can so far as you know what there is in an official foreign log that there is not in an official coastwise or intercoastal log?

A. Well, I explained to you about the foreign log. Now then that coastwise log does not have the name and rating of each and every man in it, to the best of my knowledge.

Q. Now is that the only difference?

A. Well, I haven't read that log book. That is the master's. He has that.

Q. You said that you are talking about the logs which you keep now? A. Yes, sir.

Q. When did you change?

A. I can't remember when it was changed, because the captain has that, and he might have changed it six months ago and it might have been ten months ago. That is under his supervision.

Mr. Martin: That is all.

Trial Examiner Myers: Will you write the name of J. Gordon Rosen here (handing a paper to the witness)?

(Testimony of E. H. Baldwin.)

A. Just put down the initials "J. Gordon Rosen"?

Trial Examiner Myers: Yes, sir.

A. (The witness wrote on a piece of paper.)

Trial Examiner Myers: And John Blasingame.

A. John? [1239]

Mr. Martin: James.

Trial Examiner Myers: James Blasingame.

A. I don't know just how that name is spelled.

Trial Examiner Myers: B-l-

A. B-l.

Trial Examiner Myers: a-i-

A. a-i-

Trial Examiner Myers: s-g-

A. s-g-

Trial Examiner Myers:: a-m-e.

A. a-m-e. [1240]

Trial Examiner Myers: Write "quartermaster."

A. (The witness wrote on a piece of paper.)

Trial Examiner Myers: "Port Arthur."

A. "Port Arthur", (Writing on a piece of paper.)

Trial Examiner Myers: All right. Next witness.

(Witness excused.)

DAVE ROSEN

a witness called by and on behalf of the respondent, having been first duly sworn, testified as follows:

Trial Examiner Myers: Give your name and address to the reporter please?

A. Dave Rosen; Goodhue Hotel, Port Arthur, Texas.

Direct Examination

Q. (By Mr. Van Dusen) Mr. Rosen, are you now employed by The Texas Company?

A. I have been employed a little over ten years.

Q. Are you now employed? A. Sir?

Q. Are you now employed by The Texas Company.

A. I am now employed by The Texas Company.

Q. In what capacity?

A. As chief mate.

Q. On what ship?

A. The SS "California".

Q. How long have you been chief mate on the SS "California"? [1241]

A. I have been chief mate on the SS "California" just exactly four years and about three months.

Q. You say you have been going to sea for ten years?

A. No, I haven't been going to sea for ten years. I have been going to sea for twenty-six years.

Q. Twenty-six years? A. Yes, sir.

Q. Prior to the time that you were chief mate on the SS "California" in what capacity were you employed by The Texas Company?

(Testimony of Dave Rosen.)

A. When I was chief mate of the "California"?

Q. Prior to that time?

A. Prior to that I was second mate on the Motorship "Australia".

Q. Is that a Texas Company ship?

A. That is one of our Texas Company ships.

Q. How long were you second mate on that ship?

A. I was second mate on that ship just about six years.

Q. And before that time?

A. That was the first ship I had with the Texas Company.

Q. Were you with some other company?

A. I was in a company on the West coast, the California Petroleum.

Q. Were you an officer on any of their ships?

A. I was an officer, yes, sir. [1242]

Q. What officer?

A. Well, I was second mate and I was third mate. I was in both capacities.

Q. For how many years?

A. Oh, about two years in the company.

Q. Two years with that company?

A. Yes, sir.

Q. Now, before that time what company were you employed by?

A. Well, before that time I was in the navy for eight years.

Q. You were in the navy?

(Testimony of Dave Rosen.)

A. Yes, I was in the navy from 1912 to 1920.

Q. What did you do in the navy?

A. Well, in the navy I came up from the ranks. I was in every capacity and I was paid off as chief boatswain's mate.

Q. Chief boatswain's mate in the navy?

A. Yes, sir, in the regular navy.

Q. 1912 was when you started going to sea?

A. 1912 and I did two enlistments.

Trial Examiner Myers: How long does an enlistment last?

A. Four years.

Q. (By Mr. Van Dusen) Now, while you were on the SS "California" who was captain of that vessel?

A. Oh, we have had numerous captains. The first captain was Captain Nakins. The second captain was Captain Kaufler. [1243]

Q. Well, who was captain from June 30, 1937 to September 21, 1937?

A. That was Captain Peter Peterson.

Q. Is he still captain of that vessel?

A. No, sir. He is retired and he has gone home.

Q. Where is his home?

A. Somewhere in Norway. I don't know just where it is at.

Q. When did he retire? About when?

A. Oh, he retired about May. I believe around May.

Q. Of this year?

(Testimony of Dave Rosen.)

A. Of this year. Let's see now? May of this year? Yes, I think it was May of this year.

Q. Has he been back to this country since to your knowledge? A. I don't know.

Q. You haven't seen him?

A. I haven't seen him.

Q. Now, Mr. Rosen, while you were aboard the "California" from June 30, 1937 to September 18, as chief mate what were your duties?

A. June 30, 1937?

Q. Yes.

A. Oh, I was in the hospital then.

Q. Oh, you were in the hospital for how long?

A. Well, I left the ship I think it was May 15, and I [1244] returned I think about the latter part of July.

Q. Well, then, from the latter part of July through September 18, 1937, while you were chief mate, what were your duties?

A. Well, the duties of a chief mate of a ship is the upkeep of the ship, the loading and discharging.

Q. Anything else?

A. Well, yes, there is quite a bit.

Q. Did you keep any records?

A. I am responsible to the master of the ship.

Q. Do you keep any records?

A. Keep any records? Well, I have kept a smooth log book.

Q. When the captain is ashore are you in complete charge of the ship?

(Testimony of Dave Rosen.)

A. Not of the ship. I am in complete charge of the deck department.

Q. Even while the captain is there are you in charge of the deck department?

A. I am responsible to the master of the ship for the deck department.

Q. For the deck department? A. Yes, sir.

Q. Who works in the deck department?

A. Who works in the deck department?

Q. How many men? [1245]

A. I have thirteen men.

Q. How many? A. Thirteen.

Q. Describe them. What type of men are they?

A. Well, I have a boatswain and I have three quartermasters. I have 4 able-bodied seamen. I have three ordinary seamen and I have two day men; two maintenance men. That is thirteen, isn't it? That is three, seven, ten, thirteen.

Q. You have supervision over that department?

A. Yes, sir, I am responsible to the master for that department.

Q. Now, what, briefly, are the duties of those various men whom you have mentioned?

A. Well, the boatswain, he is responsible to me; that is, I lay out the work to him every morning and he works the crew, unless I see fit that there is another job to be done or something else, and then I will tell him later on about it in the day, but otherwise I don't bother him. I let him go right ahead.

(Testimony of Dave Rosen.)

Then I have three quartermasters. Their main chief duty is steering the ship at sea in regular four hour watches and in port they stand deck watches on deck; that is, watching the gangway, watching lines, and under the supervision of myself and any of the other mates out on deck in regard to handling the cargo and valves. [1246]

Q. What does a day man do?

A. They work eight hours a day. They are mostly painting or chipping rust or washing paint.

Q. Are they ordinary seamen?

A. Ordinary seamen, yes, sir.

Q. Do you travel around the deck to see that the work is being done?

A. Yes, sir, I travel around; make a round now and then; all around.

Q. What is your shift regularly?

A. My shift at sea is the 4:00 to 8:00 watch in the morning and the 4:00 to 8:00 in the evening. In port I am on duty from 4:00 o'clock in the morning until 4:00 o'clock in the afternoon. [1247]

Q. Why is that?

A. That is in ports.

Q. I say why is that?

A. Why? Well, that is a regular chief mate's watch. I am supposed to be sure that everything is okeh before I turn over the watch to anybody else.

Q. Do you have to be more careful when the ship is in port than when it is at sea?

(Testimony of Dave Rosen.)

A. Yes, sir, you have to be more careful. The tank tops is open and there is gasoline or kerosene—whichever you have—which is always subject to fire or explosion or anything else. You have to be careful.

Q. During loading or unloading do you have to have a certain number of men on duty under you?

A. Yes, sir, unloading and loading we have a certain number of men.

Q. Who is responsible for the opening of valves?

A. I am responsible for the opening of valves.

Q. You personally?

A. I am personally, yes, sir.

Q. You are there?

A. I am always there when there is any valve to be opened to make sure that there will be no contamination of any cargo.

Q. Does the second mate ever do that?

A. The second mate has never done that. [1248]

Q. And the third mate?

A. No, sir. If they have done it, they have done it without my saying anything about it.

Q. Is the second mate under you?

A. Well, the second mate is under me. He is under the master as well. He is responsible to the master.

Q. He takes orders from you at times?

A. At times he takes orders from me; in ports, if the master is busy, or something else he will take orders from me.

(Testimony of Dave Rosen.)

Q. When you are off watch what are the second mate's duties?

A. Well, when I come off watch at 4:00 o'clock in an outside port other than the Port of Port Arthur the second mate and the third mate, they stand the night watches. In Port Arthur here we have a relief mate who comes down at 4:00 o'clock, a relief pumpman and a relief quartermaster and tank watchman. They are all automatically relieved.

Q. Do you confer with the captain from time to time on what is going on on the ship?

A. Yes, sir.

Q. Now before leaving a port is it necessary to have a required number of men on board the ship? Do you have to have a required number of men?

A. Yes, sir, before leaving port, generally about [1249]

an hour before leaving port, we check up on the crew to see if we have a full complement.

Q. You have a certain complement to fill?

A. We have a certain complement to fill, yes, sir, and if we haven't—I generally check up on the deck department and I tell one of the engineers to check up on his engine room department and the same with the steward department. The head of each department checks up on his own department and reports to the captain.

Q. Can you leave port without a full complement?

A. No, sir. We check up on the crew and if we think there is any men shy, that they are not

(Testimony of Dave Rosen.)

going to make the ship, we go up and tell the captain and the captain will tell me or he will go down himself and see Mr. Meyers and tell him that he wants so many men and the type of men he wants.

Q. What does he tell Mr. Meyers?

A. He tells Mr. Meyers, "We want so many men * * *" whatever they may be.

Mr. Martin: Mr. Examiner, unless it can be brought out that Mate Rosen was ever with the captain when he talked to Mr. Meyers, I move to strike that last answer.

Trial Examiner Myers: Well, he said he didn't go with him; that the skipper went himself.

Mr. Martin: Then he wouldn't know what he said.

Trial Examiner Myers: He doesn't know what he said be- [1250] cause he didn't say anything. Go ahead.

Q. (By Mr. Van Dusen) Now you usually give seamen until an hour before sailing before you decide to get new men?

Mr. Martin: I object to that leading question.

Trial Examiner Myers: Don't lead so much.

Mr. Van Dusen: Did you say "so much"?

Trial Examiner Myers: Yes.

Mr. Van Dusen: I didn't hear any objections.

Mr. Wright: We have just been good to you.

Q. (By Mr. Van Dusen) How long before sailing time do you give seamen in which to get back to the ship?

(Testimony of Dave Rosen.)

Mr. Wright: Mr. Examiner, I object to that for the reason that is leading and it assumes that they do give some time.

Trial Examiner Myers: Sustained.

Q. (By Mr. Van Dusen) Well, what is your practice, Mr. Rosen, in regards to signing up a new crew before leaving on another trip? Just describe that briefly.

A. Well, I personally don't sign them up. As I understand, why if we have any new men come aboard in Port Arthur, they sign them up right away. The captain signs them up.

Mr. Martin: I move to strike it out because the man says himself he doesn't know.

Trial Examiner Myers: I will take it for what it is worth and overrule the objection. [1251]

Well, when the captain is not there do you sign up the men and if you are not there the second mate signs them up and if the second mate is not there the third mate? A. Yes, sir.

Trial Examiner Myers: Why do you always stick in the captain when he is not there? You try to impress me with the idea that the captain does this and the captain does that. Now what do you do?

A. In regard to signing the crew on?

Trial Examiner Myers: Yes.

A. I don't do anything.

Trial Examiner Myers: You only do it when the captain is not there?

A. Yes, sir, when the captain is not there.

(Testimony of Dave Rosen.)

Trial Examiner Myers: When a man reports on deck he reports to the man in charge of the ship, whether it is the captain or the first, second or third mate, doesn't he?

A. Yes, sir.

Trial Examiner Myers: Well, then, why don't you say that he reports to the man in charge of the ship?

A. Yes, in charge of the ship.

Q. (By Mr. Van Dusen) Who calls Mr. Meyers for the new men that you want?

A. I either call him or the captain calls him, whoever is available to call him. [1252]

Q. You say either you or the captain?

A. Yes, sir. Mr. Meyers is generally around where we can get in touch with him. Generally when the ship is ready to sail, he is right there on the job. Don't have to call him.

Q. Can you or the captain refuse to take a man sent by Mr. Meyers?

A. Well, I cannot refuse, no, sir.

Q. Can the captain?

A. The captain can refuse if he wants to.

Q. Now when new men come aboard the ship do you inquire of them whether they are members of a union? A. No, sir.

Q. To your knowledge does the captain?

A. I don't know.

Q. Did you ever tell a man he was not wanted because he was a member of a union?

(Testimony of Dave Rosen.)

A. No, sir.

Q. Do you have the authority to tell a seaman at the end of a voyage that he is not wanted for the next voyage? Do you have that authority?

A. Have I got that authority?

Q. Do you have the authority to tell a seaman at the end of a voyage that he is not wanted for the next voyage?

A. Well, I believe I have, but I have never done it. If we have any differences we take it up to the captain right [1253] away.

Q. The captain decides that? A. Yes, sir.

Q. Do you ever recommend to the captain that a man be not signed up for the next voyage because of his union affiliations? A. No, sir.

Mr. Wright: I object to leading the witness.

Mr. Van Dusen: That is not leading.

Mr. Wright: I believe it is.

Trial Examiner Myers: Well, go ahead and don't lead him too much. Don't lead the witness too much. I know that you are trying to get through as quickly as possible, but please don't lead him so much.

Q. (By Mr. Van Dusen) Who is Mr. Hand?

A. Mr. Hand as far as I know he is the Marine Superintendent of The Texas Company at Port Arthur handling the ships; dispatching all ships to make sure that we get away on time and all that stuff. He is really the dispatcher, dispatching the ships so that they get away on time.

(Testimony of Dave Rosen.)

Q. Who is Mr. Roney?

A. Mr. J. P. Roney is the Marine Manager; general manager of the New York office. He is in charge of the whole marine division.

Q. Is he Mr. Hand's superior? [1254]

A. He is Mr. Hand's superior, yes, sir.

Q. Who is Captain Riever?

A. Captain Riever to my knowledge is vice-president and chairman of the board of directors of The Texas Company.

Q. Have you ever had any talks with them about union affiliations of the seamen?

A. Well, they have come aboard in numerous ports, Mr. Roney, Mr. Riever, and Mr. Hand, and down here and told us that The Texas Company did not discriminate against any unions or any men at all.

Q. Did they authorize you to discriminate between any seamen because of union affiliations?

A. Well, authorize or not——

Q. Did they ever tell you not to hire men because they were members of a union?

A. No, sir.

Q. Did they ever tell you to discharge a man because of his union affiliations? A. No, sir.

Q. To your knowledge did they ever tell the captain that?

Mr. Wright: Mr. Examiner, I am going to object to his leading the witness here. I hate to make objections on the ground of leading, but after all the objection was made against us. [1255]

(Testimony of Dave Rosen.)

Trial Examiner Myers: Sustained.

Mr. Williams: Mr. Examiner, certainly that is not a leading question.

Trial Examiner Myers: I consider it leading.

Mr. Williams: He is asking for a statement of facts.

Mr. Van Dusen: I take exception to that ruling.

Q. (By Mr. Van Dusen) Mr. Rosen, is it a common practice or not for seamen to speak to you or the captain about grievances aboard the ship?

A. Well, on deck; any grievances on deck always generally come to me and I go to the captain with them to see if we can't come to some agreement.

Q. Do the seamen come to you individually regarding individual grievances?

A. Well, they come to me.

Q. Do you listen to them?

A. I listen to them, yes, sir, and then we go to the captain and the captain decides.

Q. Do they ever come to you representing a group of seamen?

A. Yes, at one time they did.

Q. I am talking now about your whole career.

A. No. Just at one time they came to me; that one instance.

Q. Did you listen to them?

A. I listened to them, yes, sir. [1256]

Q. Have you any authority to settle those grievances or complaints?

A. No, sir, I have no authority to do that.

(Testimony of Dave Rosen.)

Q. Who has that authority?

A. That is up to the master of the ship.

Q. Now during the period June 30, 1937, or from the time you came back from the hospital through September 18, 1937, did you inquire as to how many or whether there were any union men on board the ship?

A. What is that?

Q. As to whether there were any members of a union among your crew? Did you ever inquire about that?

A. Well, no, I never inquired about that.

Q. Did you know who were union members?

A. Well, I had known some of them were union members, yes, sir. Some of them told me they were union members. [1257]

Q. Did you ever ask anybody whether he was a union member?

A. I never asked him, no, sir.

Q. During the time you were on the "California" as chief mate did you ever see any meetings of the crew?

A. Well, I don't know whether you would call them meetings or not. I would go through the crew's quarters and through the mess room after coffee time, or after mess hour, and there would be a crowd sitting around talking. I never listened to any discussions or anything.

Q. Do you know whether they were union meetings or not?

A. No, sir, I don't.

(Testimony of Dave Rosen.)

Q. Do you recall or do you remember an able-bodied seaman by the name of J. Gordon Rosen coming aboard the "California"?

A. Well, he didn't come aboard then. He was aboard when I came aboard.

Q. On June 30, 1937?

A. I was in the hospital then.

Q. When did you come on board?

A. About the latter part of July.

Q. Was Mr. Rosen then on board?

A. Mr. Rosen was on board then, yes, sir.

Q. Do you remember Mr. James Blasingame?

A. I remember Blasingame too.

Q. Was he on board then?

A. He was also on board when I came back.

[1258]

Q. What was his job?

A. He was quartermaster.

Q. Who was in charge of the ship while you were in the hospital?

A. That was Mr. Baldwin.

Q. Mr. Baldwin? A. Yes, sir.

Q. Did you take over that job as soon as you came aboard?

A. I took it over as soon as I came aboard.

Q. Do you recall any conversation with Mr. J. Gordon Rosen when you came aboard?

A. Not when I first came aboard, no, sir.

Q. Did you ask him if he was a member of the union? A. No, sir.

(Testimony of Dave Rosen.)

Q. Did he tell you that he was a member of the union? A. No, sir.

Q. Did you have any talk when you came on board at that time with Mr. Blasingame?

A. I did not. That is, just line of duty.

Q. Did you ask him if he was a member of the union? A. I did not.

Q. Did he tell you that he was a member of the union? A. He did not.

Q. Was Mr. J. Gordon Rosen under your supervision on board that ship? [1259]

A. He was under my supervision when I came back.

Q. Did he take orders from you?

A. He took orders from me.

Q. How about Mr. Blasingame?

A. He was quartermaster.

Q. Did he take orders from you?

A. Yes, sir. They all took orders from me.

Q. He was in your department?

A. Yes, sir, in the deck department.

Q. Were you present when they signed the shipping articles at the time they came aboard the ship on June 30?

A. No, I was not present when they first came aboard.

Q. During the period of time that you were not on that ship until Mr. J. Gordon Rosen left the ship on or about September 18, did you have any talk with him?

(Testimony of Dave Rosen.)

A. Before September 18, you mean?

Q. Yes. A. Yes, sir, I did.

Q. Did you ever discuss with him his union affiliations or activities?

A. No union affiliations. We were talking about tank cleaning and money, and overtime.

Q. During that same period of time did you have occasion to talk to Mr. Blasingame?

A. Well, not on that occasion. It was in the shipyards. [1260]

Q. During the course of that whole period of time did you while on deck or otherwise have occasion to talk to Mr. Blasingame?

A. Oh, yes. I would talk to him and tell him what to do; but I would not tell him any funny jokes or anything like that.

Q. Is it your practice to talk very much with the men on duty?

A. No, I don't, as a rule, outside of in line of duty; say good morning to a man on deck.

Q. Did you ever discuss with Mr. Blasingame his union affiliations or activities?

A. No, sir, I never did.

Q. Did Mr. J. Gordon Rosen ever come to you with any complaints or grievances?

A. Yes, sir. Gordon Rosen and Blasingame came to me with personal grievances when we were in the shipyard.

Q. About what time was that, Mr. Rosen?

A. Well, that was about three weeks prior to the time we arrived in Port Arthur September 18.

(Testimony of Dave Rosen.)

Q. Three weeks prior to that?

A. Yes. I don't remember the date.

Q. What shipyard were you in?

A. In Erie Basin, New York.

Q. Did you say Mr. Rosen and Mr. Blasingame came to see you? [1261]

A. Well, I approached them on deck first. I approached every man and told him how much time he had coming. Some of them worked in the tanks more than others. And I told Rosen, and I told Blasingame, and I told the whole crew. And everybody was satisfied except Rosen and Blasingame. They thought they should get more money. And they started telling us that the Gulf people paid more money, and the Standard Oil paid more money, and they didn't see why they should not get more money.

Q. They were speaking for other members of the crew?

A. Right then they were not. They were speaking for themselves. They were working right around the tank, and they were by themselves.

Q. Then what happened?

A. Well, we went up to the captain's office.

Q. Yes.

A. And they had two and a half days actual tank cleaning coming, and I gave them three days. And they were not satisfied with that, so the captain would give them four days pay. [1262]

Q. Yes.

(Testimony of Dave Rosen.)

A. Well, they were satisfied with that, and they went aft. And in about another half hour the boatswain came up and said they all want five dollars pay or they would all walk off, quit the ship.

Q. Yes.

A. So the captain decided he didn't have authority to give them five days' pay, and he called Mr. Roney. The captain went out on the dock and called up Mr. Roney. Mr. Roney says: "Yes, give them five days' pay," which he did.

Q. And what happened after that?

A. Well, they were satisfied then, and they went out and they turned to and started to work on deck again.

Q. Did Mr. Rosen and Mr. Blasingame then speak to you after that?

A. Not in the shipyard, no.

Q. I mean on the ship, or after you left the shipyard.

A. Yes, they told me they were dissatisfied, and that they were going to quit the ship.

Q. Dissatisfied with what?

A. Well, with all conditions, I guess; shower baths. There were not any shower baths on board for them; and cooking bad food; and numerous other things. I just can't remember them all right now.

Q. Did anyone else say he was going to quit?

[1263]

A. Blasingame and Rosen.

(Testimony of Dave Rosen.)

Q. Anyone else that you remember?

A. Well, a fellow by the name of Christensen, who was quartermaster.

Trial Examiner Myers: Just the three of them said they were going to quit; not the whole crew?

A. Well, this was after the discussion. These men were not satisfied.

Q. What?

A. That was after that discussion. They were all satisfied after they got the five dollars' pay. They were going to quit when they got to Port Arthur, and everything in general. They wanted shower baths, and they wanted better food.

Q. Was the captain present when they told you they were going to quit?

A. Yes. They came up in the room there and told us they were going to quit.

Trial Examiner Myers: Just those three?

A. No, those two men.

Q. Blasingame, Christensen and Rosen?

A. Not Christensen; just Blashingame and Rosen came up.

Q. Just the two of them came up and said they were going to quit at the end of the trip?

A. First they said they were going to quit there, in New York. [1264]

Q. But the whole crew didn't? A. No, sir.

Trial Examiner Myers: All right.

Q. (By Mr. Van Dusen) When did Mr. Christensen say they were going to quit?

(Testimony of Dave Rosen.)

A. When we got to Port Arthur.

Q. Did he say he was going to quit up there?

A. No. Christensen said he would quit down here in Port Arthur.

Q. Now, during that discussion that you had with Mr. Rosen and Mr. Blasingame in the captain's room, did you or the captain tell them that you were going to fire them? Did you or the captain tell them you were going to fire them?

A. Not to my knowledge.

Q. Did you tell either Mr. Blasingame or Mr. Rosen that they were fired?

A. No, sir, I did not.

Q. Did Mr. Spencer ever make any complaint to you?

A. No, he never made any complaint to me at all. He came in a different department to mine.

Q. What do you mean?

A. In the Engineer Department.

Q. Who was the head of that department?

A. The Chief engineer. [1265]

Q. Now, when you arrived in Port Arthur, what was the approximate date of your arrival at Port Arthur, after that discussion?

A. Well, September 18th, I think it was. As near as I can remember, I think it was September 18th.

Q. Did Mr. Rosen come up—did he come to see you at the time he left the ship, or just before he left the ship?

(Testimony of Dave Rosen.)

A. Well, first Blasingame approached me.

Q. What did he say?

A. He said he was going to quit the ship because he wanted to go home. He was dissatisfied with everything, you see, and he wanted to go home. That was one of the conversations; he was dissatisfied with everything in general back there.

Q. Did you give him certificate of discharge?

A. The captain gave him certificate of discharge.

Q. Was the captain there?

A. He went up to the captain's room.

Q. He went up to the captain's room?

A. Yes, sir; and the captain paid him off and gave him certificate of discharge.

Q. How about Mr. Rosen?

A. This Blasingame, he left the ship about noon, to the best of my recollection.

Q. Yes. [1266]

A. And after he went this Gordon Rosen, he quit too.

Q. Did he come up to see you?

A. He came up to see me.

Q. What did he say?

A. He said he had finished the day out.

Q. What was the end of the day?

A. 5:00 o'clock.

Q. Did he get certificate of discharge?

A. He got certificate of discharge, and he was paid by voucher for one day's pay.

(Testimony of Dave Rosen.)

Q. Was the captain there?

A. The captain paid him off, yes, sir.

Q. Was anyone else in the room at the time Mr. Rosen got paid off?

A. They came up at intervals there. Christensen, he came up during that time there. I don't remember, I think he was paid off.

Q. Was Mr. Blasingame there at the time Mr. Rosen was?

A. No, Blasingame had already left the ship.

Q. I see. Was Mr. Rosen paid for the day up to 5:00 o'clock that he worked?

A. Yes, he was paid up to 5:00 o'clock, a day's pay.

Q. Now, when Mr. Rosen came in and was paid off, as you have just said, did he tell you that he was fired? A. No, sir. [1267]

Mr. Wright: I am going to object to that one more time, to leading the witness.

Trial Examiner Myers: I beg your pardon.

Mr. Wright: I am going to object one more time to leading the witness.

Trial Examiner Myers: That was not a leading question. Did you tell him, that is not leading.

Q. (By Mr. Van Dusen) Have you told me all that you told Mr. Rosen at that time? What else did you say? A. I didn't say anything else.

Q. That is all you said? A. Yes, sir.

Q. Did the captain say anything to Mr. Rosen?

A. Not while I was there.

(Testimony of Dave Rosen.)

Q. Did you say anything other than you have told me to Mr. Blasingame?

A. I didn't say anything.

Q. Did the captain say anything to Mr. Blasingame? A. No, sir.

Trial Examiner Myers: You don't know that? You were not there?

Mr. Van Dusen: He said he was there.

Trial Examiner Myers: You were there when Blasingame was there? A. Yes, sir. [1268]

Q. Nothing was said?

A. Nothing was said.

Q. How do you know Blasingame left the ship then?

A. How do I know Blasingame left the ship then?

Q. That he was not coming back on the next voyage, and nothing was said.

A. He said he quit the ship. [1269]

Trial Examiner Myers: All right, go ahead.

A. And he went to the captain's room to get his discharge. And after the captain got through paying off the crew they came up to the captain and got their discharges.

Trial Examiner Myers: Okeh.

Q. (By Mr. Van Dusen) Now——

A. I don't know whether he left the ship or not. I know he left the captain's office.

Q. Left the employ of the ship?

A. Well, left the employ, yes.

(Testimony of Dave Rosen.)

Q. Now, Mr. Rosen, do you remember one Buck O'Hara aboard that ship?

A. I remember Buck O'Hara, yes, sir. He quit the ship in Stapleton, I believe. Yes, Stapleton, he quit the ship.

Q. When he left did you say: "Give my regards to Moscow?" A. No, sir.

Q. Mr. Rosen, at about the time Mr. Blasingame left the ship do you remember walking with the boatswain back aft down the passageway, and do you remember the boatswain——

Mr. Wright: We object to anything more than this. It is leading.

Trial Examiner Myers: I didn't hear the question.

Mr. Martin: The first question was——

Trial Examiner Myers: He has not finished his question. Read the question so far. [1270]

(The question was read by the reporter.)

Q. (By Mr. Van Dusen) —at which time the boatswain said to you: "You are firing the only good A. B. I have got on deck." Do you remember that? A. No, sir.

Trial Examiner Myers: Wait a minute. There is an objection there. Would you read that whole question?

(The question was read by the reporter.)

Mr. Van Dusen: Strike out the answer until Mr. Martin is heard on his objection.

(Testimony of Dave Rosen.)

Trial Examiner Myers: Are you quoting from the testimony when you read that question?

A. Yes, sir.

Trial Examiner Myers: Objection overruled.

Q. (By Mr. Van Dusen) Will you answer?

A. I don't remember.

Q. Did you make that statement?

A. Not that I know of.

Q. Did you say in reply to the boatswain: "These guys are not going to ride this ship. This ship is no union ship, and they ain't going to ride it." A. I never said anything of that kind.

Q. Now, Mr. Rosen, you were here yesterday while Mr. Owens testified? A. Yes, sir. [1271]

Q. You heard his testimony? A. Yes, sir.

Q. Do you recall about when he came on board the ship?

A. No, I don't recall the date. I remember the boatswain, Leslie Thompson, he got off to get a license, and the man on deck by the name of Duffey relieved him, and we shipped John Owens in his place.

Q. Do you remember having any discussion with Mr. Owens at the time he came on board?

A. The only discussion I had with him, he was talking about overtime.

Q. I mean at the time he came on board?

A. No, no discussion at all.

Q. Did you tell him what he was to do?

(Testimony of Dave Rosen.)

A. Well, as a general rule I just look them over, look at their A. B. and life boat tickets, and their papers, and see that they are all okeh.

Q. Did you do that?

A. Yes, sir, and sent them back to the boatswain to turn to.

Q. Do you recall asking Mr. Owens if he had a book?

A. No, sir.

Q. Do you recall him asking you: "What kind of a book?" and your saying in reply: "Copeland book."

A. No, sir, I never did.

Q. Do you recall taking him to your office after any such [1272] conversation you may have had with him?

A. I do not recall that at all.

Trial Examiner Myers: At this point may I interrupt a minute. The seamen had to show you some kind of a book?

A. They show you a certificate or something, yes, the A. B. and life boat certificate.

Q. There would not be anything unusual in that?

A. Not anything, no. I asked them to see their papers. I didn't mention any book or anything else. That takes in everything; to see that everything is all cleared, that they are naturalized American citizens.

Q. I mean it is nothing unusual?

A. No, sir, it is nothing unusual.

(Testimony of Dave Rosen.)

Q. (By Mr. Van Dusen) At that time did you say to Mr. Owens in your room, "The Texas Company does not recognize any union, you know."

A. No, sir, I never said that to him.

Q. Did you at that time say to Mr. Owens: "We don't want any union agitation back there. We are all together on this ship. There is plenty of time off. This is only a relief trip. It is up to you to make a permanent job out of it if you want to."

A. No, sir, I don't remember that.

Q. Do you know whether or not Mr. Spencer left the boat at that time, at the time Mr. Blasingame left? [1273]

A. Pardon me. I didn't get that.

Q. Do you know whether Mr. Arthur Spencer—

A. I know him. He is the second pumper.

Q. Do you know whether he left the boat at the time Mr. Blasingame left?

A. I don't recall the time he left. He left the same day.

Mr. Van Dusen: That is all.

Trial Examiner Myers: We will take a little recess, a five minutes recess.

(A short recess was then taken.) [1274]

Cross Examination

Q. (By Mr. Martin) Mate Rosen, when did Captain Peterson leave the "California"?

A. To the best of my knowledge he left about the middle part of May. I don't recollect just what date.

(Testimony of Dave Rosen.)

Q. 1938? A. 1938.

Q. Had he been an active captain aboard the ship up until that time?

A. He had been an active captain aboard that ship for about two and a half years I believe.

Q. Up until that time when he left to go to Norway?

A. Up until that time he left, yes.

Q. Were you his first mate at the time he left the "California" for good?

A. Yes, sir, I was the first mate.

Q. How long prior to then had you been his chief mate?

A. Well, I joined the "California" as chief mate July 19, 1934.

Q. And when did Captain Peterson become captain of the "California"?

A. I think it was in 1936, if I am not mistaken; I think about October, 1936.

Q. Then is it a fact that you had served under him as his chief mate for at least a year and a half?

[1275]

A. Yes, sir, all the time he was on the ship.

Q. That is correct? A. Yes, sir.

Q. Now, is Captain Peterson an active man?

A. An active man.

Q. About how old is he?

A. Well, when he retired I believe he was about 59.

Q. Was he well? A. He was well.

(Testimony of Dave Rosen.)

Q. In good health?

A. To the best of my knowledge.

Q. And robust? A. Yes.

Q. A pretty strong man physically, is he?

A. Well, he was not a very strong man, no. You take a man 59 years of age, you wouldn't call him a very strong man.

Q. How long had he been at sea?

A. Oh, he never discussed that with me.

Q. During your years aboard with Captain Peterson did you ever see him seasick?

A. Seasick?

Q. Yes. A. No, sir.

Q. He doesn't get seasick when he travels?

A. Do I ever get seasick? [1276]

Q. No, Captain Peterson?

A. Captain Peterson?

Q. Yes.

A. I couldn't say that. He was a ship master I understand for about twenty-two years.

Q. He ought to be able to take it.

A. I take it for granted.

Q. Mate Rosen, will you name me some of the ports at which Texas Company boats stop?

A. Some of the ports up north?

Q. Where they all stop, big port?

A. New York, Baltimore, Norfolk, Virginia, Charleston.

Q. Well, take Charleston, when the boat docks at Charleston——

(Testimony of Dave Rosen.)

A. I couldn't say anything about Charleston, because the "California" was too big to go into Charleston.

Q. Baltimore?

A. Baltimore, Bayonne, New Jersey.

Q. Have you ever been mate on any other Texas Company ships except the "California"?

A. The "Australia". She was much bigger than the "California".

Q. How long have you been some sort of a mate on Texas Company boats?

A. Well, second mate and third mate and chief mate, ten years.

Q. Now, when a boat docks say at Baltimore does the boat keep its regular ship's schedule when in port? [1277]

A. No, sir. We get in in the mornings, and we work mornings, and break watches at noon, sea watches, and we finish up the eight hours, and they knock off.

Q. When they knock off what can they do?

A. Well, they go ashore and do as they please. Some of them have families.

Q. Take a seaman who was on the 8:00 to 12:00 shift, and he finished his shift at noon when you are in Baltimore, can he get off?

A. No, he has to work on through the day.

Q. You are talking about a mate?

A. Mate you say?

(Testimony of Dave Rosen.)

Q. Are you talking about a mate or ordinary seaman?

A. Are you talking about the sailors on deck?

Q. Yes.

A. Well, 8:00 to 12:00, they work 8:00 to 12:00, and 1:00 to 5:00. That is eight hours. And then they knock off. The 4:00 to 8:00 watch, they have men working from 4:00 o'clock in the morning to 8:00, and they work until noon, and they finish.

Q. Take a man who has worked from 12:00 midnight to 4:00 a. m., and then you say you work him from 5:00 to 12:00?

A. 8:00 to 4:00 a. m. The sea watches break at noon, and they work together four hours, and that finishes up their eight hours. [1278]

Q. What time do they finish up?

A. They finish up at 5:00 o'clock. Otherwise, if there is work going on in the mornings, all hands turn to you see until they have gotten their eight hours in, and then they all finish up.

Q. Take a man who has worked from 12:00 midnight to 4:00?

A. Take a man who works from 12:00 midnight to 4:00 o'clock and we dock at 4:00 o'clock in the morning.

Q. Say you dock at 6:00?

A. Dock at 6:00 o'clock. We have got to tie up the ship, and we have got to connect up hoses, and we have got to open valves, and one thing and another, and that requires about two hours. They

(Testimony of Dave Rosen.)

work those two hours, and that is six hours they have, and they work two hours more, and they finish up.

Q. Are they through when they finish their eight hours?

A. They are through. We sometimes give them the rest of the day off. If it is a question of a couple of hours we give them the benefit of the doubt.

Q. Now, in the captain's absence, can you refuse a new man who comes aboard the boat?

A. No, I don't.

Q. In the captain's absence you can't?

A. In the captain's absence?

Q. Yes. A. No, I never did. [1279]

Q. Can you? Have you the power?

A. Well, I don't know. I never tried it, to tell you the truth.

Q. You are master of the vessel when the captain is not aboard?

A. No, I am not master of the vessel. I am just the officer in charge.

Q. Are you in charge of the crew? Are you the officer in charge of the crew?

A. I am in charge of the deck department and everything going on on deck, loading and discharging.

Q. If while you were in charge Mr. Meyer or Mr. Hand sent a man aboard you didn't want on there could you refuse him?

(Testimony of Dave Rosen.)

A. Could I refuse him?

Q. Yes. A. I don't believe I could.

Trial Examiner Myers: If a man came on there intoxicated would you send him back?

A. If a man was intoxicated, yes, I would refuse a man like that, for the safety of the ship or something like that, loading gasoline. [1280]

Q. Whether you had authority or not, you would take it of your own volition?

A. I would in a case like that. It was never taken up before in The Texas Company.

Q. (By Mr. Martin) Did I understand you to say that Captain Roney took a trip on your boat about four or five or six months ago, from New York to Port Arthur, or somewhere down the coast? A. Captain Roney?

Q. Yes.

A. No, I don't know that Captain Roney took a trip on the "California". If he did, I don't recollect it.

Q. Did you say that Captain Roney told you that The Texas Company never discriminated for union activity?

A. Well, whenever he came aboard, in New York or Port Arthur, he came aboard, and he told us that The Texas Company does not discriminate against anybody, and he wanted that understanding.

Q. When was it he first told you that?

A. Oh, I imagine about a year or a year and a half ago, I guess. I just can't recollect what date.

(Testimony of Dave Rosen.)

It was about a year or year and a half ago, to the best of my knowledge.

Q. Is that the way you learned that policy of the company? A. Yes, sir.

Q. Did you ever see it in print? [1281]

A. I never saw it in print, no, sir.

Q. Never did? A. No, sir.

Trial Examiner Myers: Did you ever receive any written instructions regarding this policy of the company regarding unions? A. No, sir.

Q. Now, Mr. Rosen, how do you keep track of overtime? A. Keep track of overtime?

Q. Yes.

A. Well, we have a regular overtime book, and at the end of the voyage, the day before we get in, we have a regular overtime sheet, and we make that out, and take it up to the captain, and he approves of it, and he pays them; signs it and pays them.

Q. Now when do you make out this overtime sheet?

A. I generally make it out about a day before we get in port. That is the original copy.

Q. You mean a day before you get into the lay-off port? A. To Port Arthur, yes, sir.

Q. How often do you pay off?

A. Well, we pay off for the final voyage when we arrive in Port Arthur.

Q. How about other times?

(Testimony of Dave Rosen.)

A. Other times you just give them an advance, and they draw [1282] as much money as they want up north. But the final port of discharge here is Port Arthur, the pay off.

Q. How often do you give them a pay off?

A. That is up to the master. He can pay off as many times as he wants to, as many times as he pleases.

Q. What is the custom?

A. The custom is every five days. The Captain Peterson gave them money any time they wanted it. There was no custom with him at all.

Q. But you figured up this overtime only once? Well only the day before you got into Port Arthur?

A. That is this overtime here. But when they go in a shipyard that is a different thing. That is tank cleaning.

Q. When did you figure that?

A. Before you go into the shipyard. If there are any grievances they can have it out right then.

Q. When do you put these entries of overtime down in your record?

A. The regular original sheet?

Q. Yes.

A. The day before we get to Port Arthur.

Q. Do you remember it in your head up until then?

A. No. I keep it in a book, a little book for that, from day to day, and it has everything they have done.

(Testimony of Dave Rosen.)

Q. Carry it in your hip pocket? [1283]

A. Carry it in my desk. If the men don't want their money up north they don't have to take it. They can get it down south.

Q. Now you said up there when you had that discussion concerning overtime in New York that all of the men were satisfied except Blasingame and Rosen, Gordon Rosen.

Q. No, they all seemed to be satisfied up there on the overtime. I heard no more about it then.

Q. Including Rosen and Blasingame?

A. Yes, sir.

Trial Examiner Myers: You gave them five days overtime?

A. Five days for tank cleaning.

Q. When did you have this discussion you told us about when you were in the captain's office?

A. When we were in the captain's office.

Q. Where was that?

A. In Erie Basin, dry dock, shipyard.

Q. In New York? A. Yes, sir.

Q. If I understood you correctly, you said on direct examination that all the men were satisfied except those two at that time?

A. No, they were all satisfied with the five days' pay. They were dissatisfied with other things.

[1284]

Q. They were satisfied before they got the five days?

(Testimony of Dave Rosen.)

A. They were satisfied before they got the five days.

Q. Who was satisfied before they got the five days?

A. All the crew were satisfied except Blasingame and Rosen.

Q. How do you know?

A. I went around and notified every man myself individually.

Q. As to how much for that you were going to give them?

A. As to how much tank cleaning they had.

Q. Now as you gave them what you thought was their due, did you say, are you satisfied?

A. They said it was okeh.

Q. Every man?

A. Except Blasingame and Rosen.

Q. Every man except Blasingame and Rosen?

A. Yes, sir.

Q. Who did they say that to? A. To me.

Q. Did you get it in writing?

A. No, I didn't get it in writing.

Q. Then if they were satisfied, and they said so, how do you explain that your own boatswain, your own assistant, came up a little while later and said the men demand \$5.00 overtime?

A. That is what I can't explain. I don't know what went on back there in the forecandle. When these men left the [1285] captain's office Blasingame and Rosen after we offered them \$4.00 they

(Testimony of Dave Rosen.)

were satisfied. They went back, and later on the boatswain came up and said they wanted \$5.00 pay. However, they must have had a discussion in the forecastle.

Q. Do you think they were satisfied then?

A. That I couldn't say.

Q. Do you think they were satisfied?

A. That I couldn't say. [1286]

Q. When the boatswain came up to you and said, these fellows demand \$5.00 overtime, and think they are entitled to it, do you think they were satisfied?

A. The men?

Q. Yes. A. At the time you mean?

Q. Yes.

A. They were satisfied with the five days, but they were not satisfied before that.

Q. But prior to that you thought they were satisfied, did you?

A. Yes. When I went around and asked these men myself they told me they were satisfied, anyway. What discussion went on down in the fore-castle, I don't know.

Q. Now when the boatswain came up to you and said, the men are not satisfied with \$4.00, or whatever you told them you would give them, did you feel that they were stirring up a fuss down there?

A. No, not at all. That is what we are there for, to come to some agreement; and if we couldn't, we call up Mr. Roney and find out what he would

(Testimony of Dave Rosen.)

do about it. We didn't do anything at all; didn't say anything; just looked at one another.

Q. Did you say Blasingame complained to you there in New York, brought a grievance of some kind up to you? A. In New York? [1287]

Q. Yes.

A. Yes, about this overtime business. He didn't have as much overtime coming as the rest of the crew had.

Q. Why did you think he was talking on behalf of himself?

A. Well, because he was talking to me about it.

Q. What did he say?

A. I told him he had two and a half days' time coming.

Q. When he first came up to you what did he say?

A. Well, he didn't come up to me. I went up and approached him first.

Q. What did you say to him?

A. I told him just how many days' time they had coming.

Q. Who was that?

A. I told Blasingame and Rosen, and I told all the rest of the crew. They were all on different parts of the ship, working around.

Q. Where did you go from there?

A. I went all around to the rest of the sailors.

Q. Didn't you go with Blasingame and Rosen to the captain's office?

(Testimony of Dave Rosen.)

A. When they told me about their grievance, I said, "We will go up and see the captain."

Q. Who was approaching whom then?

A. What?

Q. Who was going which way when they told you about their [1288] grievance?

A. Who was going which way?

Q. Did you approach them, or did they approach you?

A. I approached them first off, and told them how much money they were getting. And they told me they were not getting enough. And I said: "Well, we will go up to the captain's office and see the captain about it."

Q. Did you suggest they go to the captain's office?

A. I suggested that they go to the captain's office.

Q. Where were they found when they met you?

A. They were working on the forward part of the ship.

Q. Was it then when you talked to them?

A. Yes, sir.

Q. Did you later meet them somewhere on the well deck?

A. No. I stayed in the captain's room, and they came back up again.

Q. Had they ever been up there?

A. Yes. They went back aft there, and they

(Testimony of Dave Rosen.)

had some discussion of some kind, and they said they were not satisfied with three days.

Q. Did you see them go back aft? A. Yes.

Q. Where were you standing?

A. Right in the captain's room, and we could look directly on the whole afterpart of the ship.

[1289]

Q. And then what happened?

A. Then they came back and said they were not satisfied.

Q. Where did you go?

A. We were still in the captain's room.

Q. I thought you said you walked to the captain's room with them. A. Yes.

Q. And you said you approached——

A. And when they went off I stayed in the captain's room.

Q. Where did you first talk with those fellows about overtime that day?

A. On the deck, on the forepart of the vessel.

Q. Did they at that time go to the captain's office with you?

A. They went to the captain's office with me.

Q. Right then? A. Yes, sir.

Q. Then did they leave the captain's office?

A. They left the captain's office, and they went back aft somewhere. I don't know where they went. And they came back, and they said they wanted four days' pay. And the captain decided to give

(Testimony of Dave Rosen.)

them four days' pay, and they left again. They seemed to be satisfied then. They seemed to be contented with the four days' pay, those two particular men.

Q. Did you have any other discussions with Blasingame concerning any complaint while he was aboard the "California"?

A. At that time, you mean, in the shipyard?

Q. No, no; any time he was aboard.

A. He came up to me and said that he was going to get fired.

Q. Did he say when he came up that he was satisfied or discontented?

A. Yes, and he wanted to go home.

Q. How long had he been on the ship when he said that?

A. I understand he had been there since June, I guess.

Q. Several months?

A. Yes, a couple of months.

Q. And he had never made any complaints to you except this one when he said he was discontented with everything on the boat? A. Yes.

Q. Did that strike you as sort of irregular?

A. Yes, sir.

Q. Do sailors customarily act that way, sort of keeping to themselves for several months, and tell you all at once when they leave?

A. Some of them do, and some of them don't.

(Testimony of Dave Rosen.)

Trial Examiner Myers: Some of them are chronic kickers?

A. Some are chronic, yes.

Q. (By Mr. Martin) Mate Rosen, you said some of the men on the "California" were union men? [1291]

A. Some of them were union men, yes.

Q. About what percentage?

A. Well, I just couldn't say, but just about 65 per cent of them.

Q. Were union men?

A. Yes, to my knowledge.

Q. On the "California"? A. Yes, sir.

Q. How do you know?

A. Some of them told me about it.

Q. 65 per cent of them told you so?

A. The boatswain told me, yes. I figured about that much of an average. [1292]

Q. How many men told you they were members?

A. I just couldn't say offhand.

Q. When did you figure out it was 65 per cent?

A. Well, I figured it was that many men in proportion to the men I had, you see. I figured about—well, I figured about three or four men out of the whole thirteen of them were not, you see.

Q. You knew right along they were union men?

A. Some of them, yes, and some of them I did not. I may be mistaken. Maybe some of them were union; I don't know; and maybe some of them were not.

(Testimony of Dave Rosen.)

Q. How could you tell that they were union or non-union?

A. Well, they told me they were union men.

Q. Did you ever look at any papers of the men when they came aboard?

A. Their certificates, yes.

Q. Did you look at the certificates?

A. Yes, sir.

Q. When you see a man with a certificate does that indicate to you he is a union man?

A. No.

Q. Does a man with a Copeland book have to be a union man? A. That I don't know.

Q. You don't know the difference between a Copeland book——

A. Yes, I know the difference between a Copeland book and [1293] the certificate. I think the Copeland books were issued out—I don't know just when they were; and they were recalled back in again, and they issued out certificates in lieu of them. I don't exactly know when it happened.

Q. What is a rank and filer?

A. A rank and filer to the best of my knowledge is a man that belongs to the old I. S. U., and broke away from the I. S. U.

Q. Did they have a strike?

A. Did they have a strike?

Q. Did these rank and filers have a strike?

A. Yes, sir.

(Testimony of Dave Rosen.)

Q. Do you know whether they were called rank and filers when they had a strike?

A. I just heard the word. I just heard the expression. I don't know who was who.

Q. Have you known union men during most of the time you have been at sea?

A. Repeat that, please.

Q. During the yeras you have been at sea, have you met a good many union men?

A. I have, yes. I have never discriminated against any man, whether union or not.

Q. Have you met a good many union men?

A. Sure, yes, sir. I belonged to a union at one time my- [1294] self.

Q. You say you were a member once?

A. I was a member once, yes, sir; the old Neptune Association, 1921.

Q. Who was your boss then?

A. Who was my boss?

Q. What is the Neptune Association?

A. That is master mates and pilots.

Q. When were you a member of the Neptune Association? A. About 1921.

Q. For how long?

A. Oh, about a year, I guess.

Q. Are you now?

A. I am not now, no, sir.

Q. Now during that year what was your job?

A. Well, the best I can recollect, I was on one of the Ward Line ships on the East Coast.

(Testimony of Dave Rosen.)

Q. Who was your boss?

A. Who was my boss? Marine superintendent, you mean?

Q. No. Second mate, if he was your boss, and the first mate, and the captain.

A. Well, the captain would be my boss on the ship.

Q. Were you a member of the Neptune Association when you first boarded that ship?

A. Yes, sir. [1295]

Q. You were? A. Yes, sir.

Q. Did you walk up to the captain and say, "Captain, I am a member of the Neptune Association"? A. No, I did not.

Q. Did you walk up to the first mate and say, "I am a member of the Neptune Association"?

A. No, sir.

Q. Could you get a job without being a member of the Neptune Association?

A. I never took that up at all. I got a job without the Neptune Association. In fact, I joined the Neptune Association when I was in this company. I was on several——

Trial Examiner Myers: That was a pilot outfit?

A. Pilot outfit, you say?

Q. Yes.

A. Well, it consisted of masters, mates and pilots.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) Did you ever walk up to the first mate on the boat and say, "Mate, I am a member of the Neptune Association"?

(Testimony of Dave Rosen.)

A. No, I never did.

Q. Why didn't you?

A. Because I didn't think there was any reason for it.

Q. Didn't want them to know it? [1296]

A. I didn't think there was any reason for it.

Q. Now while you have been a mate has it been customary for new men to walk up to you, new men on your boat to walk up to you and say, "Mate, I am a member of a union"?

A. No, it has not been customary.

Q. As a general rule, do union men walk up to you and say, "Mate, I am a member of the N. M. U."? A. No, they do not.

Q. Or, "I am a member of the I. S. U."?

A. They do not.

Q. Did any of the men who boarded The Texas Company boats on which you have been say, "Mate, I am a union man"?

A. I never knew of that.

Q. Never a one? A. No.

Q. Well, how do you know they were union men?

A. These men that were aboard the ship, you mean?

Q. Yes. A. They told me.

Q. They walked right up and told you?

Q. They told me they were members of the N. M. U.

Q. Did you ask them?

A. No, I didn't ask them.

(Testimony of Dave Rosen.)

Q. Did they just walk up and say, "I am a member"? A. Yes. [1297]

Q. Did you ever do that when you were a member of the union? A. What?

Q. Ever walk up to your superior and say, "I am a union man"? A. No.

Q. But they did?

A. Yes, some of them did, yes, and some of them did not.

Q. Did 65 per cent of them do that?

A. About 65 per cent, I guess.

Q. Now does that 65 per cent include members of the engine and steward's force?

A. No, I am just talking about deck force.

Q. Just the deck force? A. That is all.

Q. How many are there on the deck force on the "California"?

A. Well, there is the boatswain, there are three quartermasters, and there are four able-bodied seamen, three ordinary seamen, and two day men, who also are ordinary seamen.

Q. How much is 65 per cent of 13?

A. Well, roughly, I would say about three or four.

Q. Three or four is 65 per cent of 13?

A. Roughly speaking, I will say. I have not figured it out. [1298]

Q. When did you first figure that out?

A. What?

Q. When did you first figure that out?

(Testimony of Dave Rosen.)

A. Thirteen men. Roughly speaking, that would be about two men.

Q. How many? A. About two.

Trial Examiner Myers: Who were not union, you mean? You mean one-third were not members?

A. That is what I figured, roughly. I didn't do any figuring on pencil and paper.

Q. (By Mr. Martin) All but about two, you say, were union men? That means that 11 of them were union men?

A. I figure about 11 of them were union men.

Q. Do you remember 11 specific instances when a man came up to you and said, "Mate, I am a union man"?

A. No, he didn't say that to me.

Q. Do you remember 11 specific instances when a man came up to you and said, "Mate, I am a member of the N. M. U."?

A. No, I wouldn't say that.

Q. Then how did you learn that 11 out of 13 were members of the union?

A. Well, I know some of them carried books and things like that.

Q. Where did you see them? [1299]

A. I saw them when they came aboard sometimes.

Q. Did they show them to you?

A. They show them to me, or have them sticking out of their pockets there, back pocket, something like that.

(Testimony of Dave Rosen.)

Q. Don't seamen carry all their papers in their back pocket, in a great big leather folder?

A. Sometimes they do. Sometimes you can see an N. M. U. book sticking out too.

Trial Examiner Myers: Judge, you said you wanted to adjourn at 12:00?

Mr. Williams: Yes, sir.

Trial Examiner Myers: How long do you want?

Mr. Williams: I can get back in an hour or an hour and a quarter, if necessary.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: All right, we will take an hour and a half for lunch, gentlemen, and make it up later in the day. We will adjourn until 1:30.

(Thereupon, a recess was taken until 1:30 o'clock p. m.) [1300]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Myers: Will you take the stand, Mr. Rosen?

DAVE ROSEN

resumed the stand and testified further as follows:

Trial Examiner Myers: You say that when the captain is not aboard you are responsible for the deck crew?

A. Yes, sir.

Trial Examiner Myers: And who is responsible for the engine crew?

(Testimony of Dave Rosen.)

A. Well, the chief engineer or the first assistant engineer if he is not aboard; one of the licensed engineers.

Trial Examiner Myers: Now you told us before that Captain Roney and the chairman of the board of The Texas Company——

A. (Interrupting) He is not the chairman. He is the marine manager. Mr. Riever is the chairman of the board of directors.

Trial Examiner Myers: I guess you didn't hear me. I said Captain Roney and the chairman of the board of directors of The Texas Company came aboard the SS "California" a year ago, is that correct?

A. Well, they came on board several times. About a year [1301] ago was about the first time that I know anything about.

Trial Examiner Myers: Well, about how many times did they come aboard altogether?

A. Well, I couldn't say. Several different times at different ports.

Trial Examiner Myers: At which ports?

A. Well, they would come aboard in New York sometimes, they would come aboard in Baltimore sometimes, they would come aboard in Providence sometimes and sometimes come aboard in Port Arthur.

Trial Examiner Myers: Did they actually come aboard in those various ports?

(Testimony of Dave Rosen.)

A. In those various ports the ship was in at different times.

Trial Examiner Myers: When did they speak to you about unions? Do you remember?

A. Well, on several occasions.

Trial Examiner Myers: Well, when was the first time?

A. Well, as far as I can remember I think it was about—let's see? About a year ago. I think it was about a year ago.

Trial Examiner Myers: And that was in New York?

A. I don't know whether it was New York or one of the other ports.

Trial Examiner Myers: I beg your pardon?

[1302]

A. I say I can't say whether it was New York or one of the other ports.

Trial Examiner Myers: And who was present when they spoke to you about unions?

A. Well, I couldn't say who was present at the time. Sometimes I would probably be with the captain; sometimes with one of the other officers on the ship.

Trial Examiner Myers: Do you remember the first time they came to you and spoke to you about unions?

A. Well, I believe the first time they spoke about it was when the new working rules came out.

(Testimony of Dave Rosen.)

Trial Examiner Myers: Now the "California" was in New York Harbor a year ago, wasn't it? The "California" was in New York Harbor about a year ago, isn't that right?

A. Well, as far as I can remember, yes.

Trial Examiner Myers: Well, you said that you and Rosen and Blasingame had some discussion about overtime. Wasn't that about a year ago?

A. I believe it was, yes, sir.

Trial Examiner Myers: Wasn't it in September, 1937? It was in September, 1937, wasn't it?

A. About a year ago.

Trial Examiner Myers: Was that the time that Mr. Riever and Mr. Roney came aboard?

A. Well, they came aboard at that time when it was in the [1303] shipyard. They came aboard after we had been there a couple of weeks.

Trial Examiner Myers: Now could you tell me in your own words just what those two men or either one of the men told you about unions?

A. Well, they didn't say nothing much about unions, but they said they didn't discriminate against any men whether they were union or non-union.

Trial Examiner Myers: Well, how did that happen to come up in the discussion?

A. Well, I suppose it came up on account of the working rules, the working agreement or something.

Trial Examiner Myers: I beg your pardon?

(Testimony of Dave Rosen.)

A. It came up on account of those working rules that were sent out.

Trial Examiner Myers: What working rules were those?

A. They were working rules sent out in October to all ships of The Texas Company fleet and posted in the most convenient place; posted right in the crew's mess room.

Trial Examiner Myers: When did they have the talks with you? Before they sent out the rules?

A. After that. Somewheres probably after that. I can't just remember whether it was before or after. I couldn't say. That has been a year ago. It was some time around that time. [1304]

Trial Examiner Myers: You don't remember just what the words were? A. No.

Trial Examiner Myers: But the substance of the conversation was that you should not discriminate with reference to union or non-union men, is that right? A. Yes, sir.

Trial Examiner Myers: And what did you tell them after they told you that?

A. I told them that we hadn't done it; we didn't make it a practice of discriminating against any men, union or non-union men.

Trial Examiner Myers: Did you tell them that you at one time belonged to a union?

A. No, I didn't tell them that.

Trial Examiner Myers: Now in the course of your inspecting the ship did you ever have an opportunity to notice Rosen's work aboard ship?

(Testimony of Dave Rosen.)

A. Well, in the course of my inspection I would notice his work and everybody else's work in general. I think it was nothing exceptional. Just what any other A.B. could do.

Trial Examiner Myers: Just the average A.B.'s work? A. Just the average routine work.

Trial Examiner Myers: There was nothing bad about it?

A. No, there was nothing bad about it. [1305]

Trial Examiner Myers: And nothing good? Is that what you mean?

A. Just ordinary routine work.

Trial Examiner Myers: He did his work, didn't he? A. He done his work, yes.

Trial Examiner Myers: Have you any more cross examination, Mr. Martin?

Mr. Martin: Yes, Mr. Examiner.

Trial Examiner Myers: Proceed with it and let's get along. We don't want to waste any time.

Cross Examination

(Continued)

Q. (By Mr. Martin) Mr. Rosen, when did you say these new working rules were put into effect?

A. I beleive it was right after October, 1937, they came aboard the ship.

Q. Did they have anything in them about not discriminating between union and non-union men?

A. Well, I tell you I believe they have.

Q. You believe they have? A. Yes.

(Testimony of Dave Rosen.)

Q. When was it that Mr. Gordon Rosen and Mr. Spencer and Mr. Blasingame left the boat?

A. That was in September.

Q. The preceding month?

A. The preceding month, yes. [1306]

Q. Do you see any connection between those two things?

A. Let's see now? I believe that was in September and these didn't come out until October.

[1307]

Q. These working rules with thier non-discrimination clause came out just a few weeks after they left the boat?

A. Just after that they came out; in about September.

Q. Was it then that Captain Roney talked to you? A. Just about.

Q. Did you see any connection between Captain Roney's visit and these working rules and these men's discharge? A. No.

Q. I thought you told me before lunch you had never seen anything about this non-discrimination in writing?

A. I thought so too, but I had overlooked it.

Q. Your memory has been refreshed since then?

A. No, but I had overlooked it.

Q. You mean you didn't figure you would be asked that question? A. I beg your pardon.

Q. I say you mean you didn't figure you would be asked that question?

(Testimony of Dave Rosen.)

A. I didn't figure I would be asked it? No. You asked me it already.

Q. Did I understand you correctly that the only times that Mr. Blasingame mentioned grievances to you was that time in New York?

A. You mean in the shipyard?

Q. Yes. [1308]

A. No, he mentioned grievances when we got to Port Arthur too.

Q. Just those two times? A. Yes, sir.

Q. During the entire period he was on the boat?

A. Repeat that please.

Q. During the entire period he was on the boat? Just those two times?

A. Just those two times.

Q. Now, you wouldn't say he is a chronic kicker from those two times would you? A. No.

Q. You wouldn't say he was a chronic kicker?

A. No, I wouldn't say he was a chronic kicker.

Q. So if he was fired he wouldn't have been fired for being a chronic kicker?

A. No, he wouldn't be fired for being a chronic kicker, but he wasn't fired.

Q. Now, to clarify the record, will you take your mind back to that instance in New York and begin with the time you first mentioned overtime to Blasingame and Rosen and Spencer or any other members of the crew. Then tell us, step by step, exactly where you met those men and what was said and then what you saw. Do it step by step and make

(Testimony of Dave Rosen.)

it all inclusive and get in everything that you can remember. [1309]

A. All right. We first arrived at the shipyard. Those men were all busy working around the decks. I went around to each individual man and told him how much money they had coming to him for over-time as you call it; tank cleaning money; and when I got to Blasingame and Rosen I told them how much money they had coming. They were working on the fore part of the ship.

Q. Both of them?

A. Both of them, yes, sir; working together.

They didn't like the idea; didn't think they were getting enough.

So I said, "I will take you up to the captain's office."

We went to the captain's office and Rosen was supposed to get three days' pay, Blasingame two and a half days' pay. He didn't work on the tanks as long as Rosen did. They were not satisfied and they started telling us what the Gulf Refining ships were getting and the Standard Oil were getting and all of that thing.

So the captain said, "Well, we will give you four days' pay."

Well, finally they agreed to four days' pay and they left the office and they went back aft. Where they went we didn't know. They went out of sight. Pretty soon why the boatswain came up and says that the gang wants five days' pay or they all quit.

[1310]

(Testimony of Dave Rosen.)

Well, the captain and me looked at one another and the captain told him he wasn't authorized to pay five days' pay but that he would go down on the dock and call up Mr. Roney, which he did. He called up Mr. Roney and Mr. Roney told him, "Give them five days' pay."

So he gave them five days' pay and everybody came out and turned to.

As far as we were concerned they seemed to be contented. What was going on amongst them we didn't know. They seemed to be contented at that time. They done their work.

Q. Anything else? A. That is all.

Q. Can you name me some of the members of your crew in September, 1937 who were not members of the union?

A. No, I can't do that now. I don't believe I can remember them.

Q. Can you describe to me what an N. M. U. book looks like?

A. All I know, it is a black book with "N. M. U." on the cover is all I know. The men would come aboard there and show me their papers and they would pull out all their papers and the N. M. U. book would come out with it. A couple of occasions there I had a chance to see it that way. Or else they would have it in their back pocket.

Q. Why would they show you their papers?

A. Well, when a new man comes aboard he shows me his papers. [1311]

(Testimony of Dave Rosen.)

Q. He shows you his papers?

A. A new man comes aboard and he shows me his A. B. and life boat ticket.

Q. Do they always do that?

A. Yes, sir, always do that.

Q. How many instances like that happened?

A. Well, I can't recall that right now just how many times it happened.

Q. Are N. M. U. books covered with anything?

A. Well, the books themselves are not, but some of them were in envelopes. Some of them were not.

Q. What color was the envelope?

A. Well, an ordinary manila envelope I guess.

Q. Can you name me any member of the crew of the "California" in 1937 who came up to you and said, "I am a union man"?

A. I cannot. I don't remember them.

Q. Why did you quit the Neptune Society?

A. Well, there was a lot of trouble in them days. We had a secretary-treasurer by the name of Captain McGray and he was supposed to have been accused of misappropriating funds or something to that effect.

Q. Who was this? The head of the union?

A. What?

Q. Is this the head of the union?

A. Yes, sir, the head of the union. He was secretary-treasurer. [1312]

Q. That is unusual, isn't it?

A. Well, it wasn't unusual in this case. There was a lot of discrimination and a lot of trouble

(Testimony of Dave Rosen.)

about it and they had quite a few meetings and a lot of people decided to quit.

Q. Do you think that is the usual thing in a union?

A. Well, no, I don't think so. Some, yes; and some, not.

Q. Did you like that union while you were in it?

A. Yes, I liked that union. It was a good union and all.

Q. Did you join another one after you left that one? A. No, I haven't.

Q. How come?

A. Well, I just didn't want to join any more unions, that is all.

Q. Were you against them after that?

A. I quit the union after that.

Q. Did that sour you on unions?

A. Did it what?

Q. Sour you?

A. Sour? Yes, it soured me for a while.

Q. Did you recover? A. Yes, I did.

Q. When?

A. Oh, I just can't say when. This was a long time ago.

Q. How many N. M. U. books have you seen?

[1313]

A. Oh, I can't recall that.

Q. How many did you see on the "California" back in 1937?

(Testimony of Dave Rosen.)

A. I can't recall that either; if I seen any at all.

Q. What color did you say they are?

A. They are black books, what I seen of them.

Q. Did you say you didn't see any at all on the "California"?

A. Sure. I said I had seen some on the "California."

Q. You did see some? A. Oh, yes.

Q. How many?

A. Well, I can't recall just how many.

Q. Eleven?

A. Oh, I don't know. I couldn't say eleven or seven or seven or eight. I just didn't take any notes of it.

Q. You have seen enough of them so that you are pretty sure what they look like?

A. Yes, I have seen some.

Q. Are they made of leather?

A. Eleven? No, I wouldn't say eleven.

Q. Leather? The books are covered with leather, black leather, are they?

A. Well, to tell you the truth, I never handled any of them. I just seen them offhandedly. They looked like black leather. They may not have been. That is the way they looked to me. [1314]

Q. Is that how you tell, that those men who had the books were members of the N. M. U.?

A. Well, naturally a man who didn't have a book wouldn't be a member of the N. M. U., would he? But it didn't make any difference to me whether he had a book or not.

(Testimony of Dave Rosen.)

Q. I understand, but I am just trying to find out how you learned who was a union member and who was not.

A. Well, as I say, I might have seen some come aboard and have them in their pockets and take them out with their papers or something else. Somebody might tell me that that fellow was a union man or something else maybe.

Q. As a matter of fact, isn't the union book blue instead of black?

A. The N. M. U. book?

Q. Yes, sir.

A. Well, that is blue, yes.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Rosen, during cross examination you mentioned working rules. I show you this writing entitled "Texas Company Marine Department Working Conditions and Overtime Rules, Unlicensed Personnel" dated October 1, 1937, and ask you if they are the working rules to which you referred.

A. Now, I see it. Yes. The rules are published aboard [1315] the ship in the crew's mess room.

Q. When were they received on the "California"?

A. Well, they came out quite a bit after October and they were posted as soon as they came aboard. This No. 1 item here says, "No employee will lose

(Testimony of Dave Rosen.)

his job or be forced off his job because of membership or non-membership in any organization.”

Well, I may have overlooked that.

Mr. Wright: I move that it be stricken as not responsive to any question.

Mr. Van Dusen: I offer this in evidence.

Trial Examiner Myers: Any objection?

Mr. Martin: No objection.

Trial Examiner Myers: There being no objection I ask the reporter to please mark that paper in evidence as Respondent's Exhibit No. 12.

(Thereupon the document above referred to was marked as “Respondent's Exhibit No. 12” for identification and was received in evidence.)

RESPONDENT'S EXHIBIT NO. 12

The Texas Company
Marine Department

WORKING CONDITIONS AND OVERTIME RULES — UNLICENSED PERSONNEL

October 1, 1937

Notice to All Employees

(To be posted on bulletin boards of all vessels)

The Company announces the following general policy which will govern working conditions aboard its vessels.

General Rules

1. No employee will lose his job or be forced off a ship because of his membership or non-membership in any organization.

(Testimony of Dave Rosen.)

2. It is the Company's policy to provide the number of personnel as required by law and as determined by the Company in line with good management.

3. Overtime will not be paid for work during regular working hours.

4. No intoxicating liquors will be permitted on board ship at any time.

Working Rules

1. Saturday afternoons, Sundays, and the following Holidays—New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas shall constitute overtime for any work performed in all ports. While at anchorage port time to commence immediately upon loading or discharging of cargo. If ship does not move from anchorage within two hours after the completion of discharging or loading operation for the purpose of shifting to another berth or dock, the overtime rate shall cease.

2. On Saturday afternoons, Sundays, or the above Holidays at sea, any work performed other than for the navigation and normal operation of the vessel, and for the safety of the vessel, crew and cargo shall constitute overtime.

3. All above Holidays falling on Sundays are to be observed on the following day.

4. All work done outside of the regular working schedule except for the safety of the vessel, crew

(Testimony of Dave Rosen.)

and cargo is to be paid for at the rate of 70c an hour in all departments.

5. If because of illness or other reasons an employee is assigned for one full day or watch to another classification paying a higher rate than his own, he shall receive the higher rate during such assignment.

6. All unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay. Those in continuous service two years or more shall be given an annual vacation of two weeks with pay.

7. When seamen are required to do extra work because a vessel sailed "short-handed", the wages of the absent seamen shall be divided among the seamen who perform the work.

Deck Department

1. Overtime shall be paid for tying up or letting go lines if the work is done outside the regular working schedule.

2. Tank cleaning. Men on watch required to enter tanks for cleaning shall be paid 70c per hour. Men not on watch required to enter tanks for cleaning will be paid \$1.00 per hour. Men actually engaged in the removal of sludge from the tanks, whether on deck or in the tanks, shall be paid at the above overtime rates.

3. At sea, it shall be the normal practice not to perform any work after 6:00 P. M. or before 6:00

(Testimony of Dave Rosen.)

A. M. except for navigation and the safety of the vessel, crew, or cargo.

4. Pumpmen. At the discharge port, the first pumpman's eight hours are to begin with the instructions to start discharging cargo or with the instructions to stand by to discharge cargo, such time to be continuous. The second pumpman's eight hours are to begin when he relieves the first pumpman. Each pumpman is to work eight hours in each twenty-four hours, and any additional time worked in each twenty-four hour period is to be considered overtime.

5. At sea the pumpmen will work eight hours per day, except on days of arrival when the pumpmen's day shall start as outlined in paragraph 4. Any work performed on the day of arrival previous to instructions to start discharging cargo or instructions to stand by to discharge cargo, will be considered overtime.

Engine Department

1. Oilers at Sea are to be divided into three watches. Their work will consist of oiling main and auxiliary machinery and the steering gear, ice machine and blowers which may be outside the engine room spaces. They shall not while on watch be called upon to perform any other work. For their own safety, they are to keep hand rails, gratings and floor plates wiped in way of moving machinery. Such work as polishing brass or hand rails, painting, scaling or washing paint work is not to be done by the Oilers.

(Testimony of Dave Rosen.)

2. Oilers in port if on watch at anchor or at the dock provided they are not required to tend water, shall assist in making repairs between the hours of 6:00 A. M. to 6:00 P. M. as directed by the Engineer. No work outside of the routine standing of an anchor watch is to be done by the Oilers between the hours of 6:00 P. M. and 6:00 A. M.

Oilers in Port and watches broken, the hours of work shall be from 8:00 A. M. to 12:00 Noon, 1 P. M. to 5:00 P. M.

3. Watertenders (when carried) at sea shall be divided in three watches. They shall not while on watch be called upon to perform any other work.

4. Watertenders (when carried) in port if not on watch and no steam at the dock shall assist in making repairs between the hours of 6:00 A. M. and 6:00 P. M. as directed by the Engineer.

Watertenders in port with watches broken and no steam, the hours of work shall be from 8:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 5:00 P. M.

5. Firemen at sea shall be divided into three watches. The firemen are to tend the fires, clean burners, fuel oil strainers and keep their stations clean. They are not to go above the first grating or below the floor plates for any cleaning or painting except to clean any loose oil resulting from their work. Also, Firemen are not to be required to tend water.

6. Firemen in port and watches not broken, their duties shall be the same as at sea.

(Testimony of Dave Rosen.)

Firemen in port with watches broken and no steam, shall assist in the upkeep and repair work as directed by the Engineer. Their hours shall be from 8:00 A. M. to 12:00 Noon, 1:00 P. M. to 5:00 P. M.

7. Wipers at Sea and in Port shall work between the hours of 8:00 A. M. to 12:00 Noon, 1:00 to 5:00 P. M. They will be required to do the general cleaning in the Engine Department spaces, assist in the repair work as directed by the Engineer.

Wipers are not to be required to wipe hand rails, gratings, and floor plates around machinery while in motion.

Wipers shall keep the wash room and toilets of the Engine Department clean on ship's time.

Steward's Department

1. The hours in the Steward's Department shall normally be for a period of eight hours each day in a spread between 6:00 A. M. and 6:00 P. M. This is in line with the Company's established policy of eight hours' work per day. However, no overtime will be paid for the daily routine work such as preparation and serving of food, cleaning of quarters, etc.

2. The Steward's Department personnel shall not be required to carry stores from shore to vessel or from vessel to shore, but shall be required to stow stores away.

3. The members of the Steward's Department shall not be required to do painting, chipping, or

(Testimony of Dave Rosen.)

scraping. This shall not be construed to mean that they may not paint their own living quarters.

4. No polishing of brass is to be done on Saturday afternoons, Sundays or holidays.

5. Members of the Steward's Department shall not be required to clean Sailors' wash rooms and toilets.

The above rules are to be considered as only temporary and are subject to change at any time.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, these working rules, were they posted on the "California" when Mr. Blasingame and Mr. Rosen were on that ship? A. No, they were not.

Trial Examiner Myers: I beg your pardon.

A. They were not.

Q. (By Mr. Van Dusen) Were they posted when Mr. Owens [1316] who testified yesterday was on the ship?

A. They were posted when Owens was aboard the ship.

Q. Now, did Mr. Roney ever go on your ship before October 3, 1937?

A. Oh, he used to come on the ship quite often.

Q. How long has he been going on the ships?

A. Well, he has been coming on the ships as long as I have been in The Texas Company.

Q. Now prior to October 1, 1937, did he say

(Testimony of Dave Rosen.)

anything to you about the Company's policy in union matters? A. I don't recall.

Q. He didn't. You don't recall?

A. I don't recall.

Q. Would you say that he didn't?

A. Well, I don't recall that.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Now, when Blasingame and Gordon Rosen came up to see you and the captain about the overtime, did they come on behalf of themselves or on behalf of the whole crew?

A. Well, they came up on behalf of themselves because I was speaking to them on the forward deck and we went up to the captain's office and naturally I hadn't seen any of the crew before that.

Trial Examiner Myers: And they didn't come on behalf [1317] of the entire crew?

A. No, not then.

Trial Examiner Myers: When did they come on behalf of the entire crew?

A. They didn't come up on behalf of the entire crew. They sent the boatswain up.

Trial Examiner Myers: Well, when you fixed Rosen's overtime and Blasingame's overtime at four days, did you fix it for the entire crew?

A. That would be for the entire crew. If you give it to one, you have to give it to all. That was understood, however, that all hands got four days' pay.

(Testimony of Dave Rosen.)

Trial Examiner Myers: Did that mean the entire crew?

A. The entire crew in the Deck Department.

Trial Examiner Myers: That is all.

(Witness excused.) [1318]

MARTIN ADER

was sworn and testified as follows:

Direct Examination

Q. (By Mr. Van Dusen) Captain Ader, are you captain of the "Australia"?

A. Yes, sir. [1475]

Q. How long have you been captain of the "Australia"?

A. Since July 1935.

Q. What?

A. Since July, 1935.

Q. Prior to that time were you captain of any other vessels?

A. Yes.

Q. For The Texas Company?

A. Yes.

Q. For how long?

A. On the Steamship "Aryian" from 1932, beginning of April, up until July 10, actually that I changed, was transferred to the "Australia". [1476]

Cross Examination

Q. (By Mr. Wright) Captain Ader, during the course of time you have been captain on a ship have you had occasion to sail a ship to a foreign country?

A. Yes, sir.

(Testimony of Martin Ader.)

Q. As a captain on a vessel? A. Yes.

Q. Does the captain on a vessel keep the log?

A. Sir?

Q. Does he keep the log?

A. Yes, sir, he does.

Q. Does anybody else keep it with him?

A. It is witnessed by the mate. That is necessary for particular cases.

Q. The captain makes the entries though?

A. The captain makes his own entries; that is, in foreign countries.

Q. What kind of logs are there? Does the ship have two logs?

A. There are official logs.

Q. Where is an official log kept?

A. In foreign countries, if that is what you are referring to.

Q. I beg pardon?

A. You are referring to an official log, the master's offi- [1486] cial log?

Q. The official log, and then there is also what they call the smooth log? A. Yes, sir.

Q. Now then the log, both logs, as a matter of fact, are pretty important on a ship, aren't they?

A. Yes, sir, a complete record.

Q. And every ship has a log? A. Yes.

Q. Now isn't the log considered so important that the master himself on the ship is responsible for what goes in it?

(Testimony of Martin Ader.)

A. For what goes in either log?

Q. Yes. A. As long as it is——

Q. You are to take care of the logs?

A. Yes, sir; keep them, regardless of whether in my favor or not.

Q. It is supposed to go in the log, even if it is against you? A. That is it.

Q. Now there is a difference of course between foreign logs, like you keep on a foreign voyage, and the log you keep on a coastwise voyage, that is true, isn't it?

A. Not exactly; not in a smooth log, there is not.

[1487]

Q. There is no difference in the smooth log?

A. No, sir.

Q. Is there any difference in the official log?

A. Very slight discrepancies.

Q. What are those, the differences in the official log?

A. Well, you mean in the coastwise trade and the foreign trade?

Q. Yes. What is the difference between a coastwise log and a foreign log?

A. There is hardly any difference. The master wishes to keep the same data as he does on foreign trips.

Q. In ordinary practice the master does keep the same information on foreign voyages and on coastwise voyages?

A. If he wishes to. Otherwise he takes just what is absolutely required by law.

(Testimony of Martin Ader.)

Q. The law does not actually require as much on a coastwise log as it does on a foreign log?

A. No, it doesn't, and therefore the master just takes what the law requires, as agreed with the United States Local Inspectors and Shipping Commissioners, where he finally files those log books.

Q. So on a coastwise voyage if a man got sick on a ship you would put that in the log book, wouldn't you? A. Yes.

Q. If a man went to the ship's hospital you would put that [1488] in the log, wouldn't you?

A. Yes.

Q. Which one of those logs would you put those two entries in, the official log or the smooth log?

A. They are usually carried in both of them.

Q. I beg pardon?

A. Practically carried in both of them.

Q. Would he put the entry in both logs?

A. It would be in both logs.

Q. In the logs you carry the direction of the vessel, that is true, isn't it, where you are going, your course? A. Yes.

Q. That is stated in the log? A. Yes, sir.

Q. Which log do you put that in?

A. The smooth log.

Q. Do you also put it in the official log?

A. Not necessarily. We are not required to.

Q. Do you even put it in there as a matter of practice? A. Sure.

Q. Do you carry it in that log book too?

(Testimony of Martin Ader.)

A. Not the ship's course.

Q. You don't carry it in the other log?

A. No. It is not columned for that purpose.

Q. You also keep a record of the ship's speed, don't you, [1489] in the log? A. Yes.

Q. Which log do you keep that in?

A. In the smooth log.

Q. Do you also keep weather conditions in the log? A. The smooth log, briefly.

Q. Now as a matter of fact, practically everything of any importance goes into one of the two logs, doesn't it? A. Yes, sir.

Q. Suppose that in a particular port unusual conditions arose on board a ship, would that condition be recorded in the log by you?

A. Usually.

Q. Usually? A. Yes.

Q. Now then—— A. Unusual incidents.

Q. How unusual would the condition have to be before you would feel like you ought not to put it in there?

A. That I should not put it in there?

Q. Yes. A. Well, I guess an injury——

Q. Let me put it this way. A. All right.

Q. The more important or unusual the event, the more likely [1490] you are to put it in the book, is that right? A. The more unusual it is?

Q. Yes. If it were an unusual circumstance you know you would put it in there? A. Yes.

(Testimony of Martin Ader.)

Q. And if it were important you know you would put it in there? A. That is correct.

Q. You cannot tell without knowing the event which log you would put it in, can you?

A. No.

Q. Suppose one of the mates got drunk and came on board drunk, you would ordinarily put that in the log, wouldn't you? A. In port?

Q. In port.

A. If it came to my knowledge.

Q. If it came to your attention you would put it in the log? A. Yes.

Q. Suppose a man was on the vessel and got drunk, would you put that in the log?

A. If it was an unusual case, very likely I would. I don't say that I would put it in the log if the man is not on duty. [1491]

Q. Now suppose in a particular port circumstances arose on the ship that bordered on riot, would you put that in the log? A. What?

Q. That bordered on being a riot, a fight.

A. Fight?

Q. Would you put that in the log?

A. Yes.

Q. You would?

A. I probably would. At least, I would make my notation of it. [1492]

Q. (By Mr. Wright) Now, Captain, suppose that a bunch of sailors got in a fight out on the dock right close to the ship and that came to your at-

(Testimony of Martin Ader.)

tention, would you put that in the log that all your sailors were out there scrapping on the dock?

A. Just why?

Q. I beg your pardon?

A. The log is for the ship.

Q. In other words, if it happened out on the dock you would not put it in?

A. I would draw my own conclusion about that.

Q. I beg your pardon?

A. I would have my own conclusion about that.

Q. Well, what do you think now? Do you think you would put it in? A. Which?

Q. If they had a fight out on the dock next to the ship; all the seamen out there scrapping?

A. How should I know? I am not a dock watchman.

Q. Well, do you think you would put it in the log? A. Why should I?

Q. I don't know. If you think you would put it in there, just say so. All I want to know is whether you think you would or would not.

A. If it is of concern to me or my ship; any damage is done [1493] to it? Is that what you indicate? The ship is in danger or otherwise?

Trial Examiner Myers: Will you come to the point? What is the question you want to ask the captain?

The Witness: You mean the ship is in danger?

Q. (By Mr. Wright) Suppose after they got through fighting out on the dock they all came

(Testimony of Martin Ader.)

aboard, some of them drunk, would you put it in the log then?

A. Some of them drunk without disturbance? You mean they all come aboard and go to bed?

Q. No. They are fighting out on the dock and they come on board.

A. They all go to bed and in an hour everything is peaceful? I want to get this complete.

Q. Suppose some of them missed a watch after they came on after having a fight on the dock and everything, would you put that in the log?

A. Sometimes, but I would make an investigation before I did.

Q. Ordinarily if you investigate it and find it to be true——

A. (Interrupting) If I stop and investigate it I have a right to put it in the log. That would be in my judgment. If I find somebody to take his watch and he is satisfied to take another man's duty and he has volunteered to do it——

Q. (Interrupting) You would not put that in the log? A. That is my own judgment.

[1494]

Q. If he missed a watch and you knew he missed a watch because he was drunk, would you put it in the log?

A. Not if somebody says, "I agree to stand his watch."

Q. Suppose nobody said that, then would you put that in the log? A. It should be.

(Testimony of Martin Ader.)

Q. Even on a coastwise trip?

A. The master has his right to choose on that, because there is no law written in my knowledge—maybe there is. I might be wrong, but as far as I know I can still use my own judgment, but as a custom it should be in there.

Q. But as a matter of good seamanship a good captain would put it in there?

A. Somebody causing disorder amongst the crew; especially disturbing another man's peace.

Q. Captain, during your time as a captain on a ship have you had occasion ever to fire anybody off the ship?

A. Usually they leave before I get to it.

Q. Ordinarily they leave? A. Yes.

Q. Well, I am not talking about any specific example now. I am just asking if at any time during the course of your trips as captain you ever had occasion to fire a man for any reason?

A. Well, I don't got any evidence of that or make any [1495] special instance pointing to that fact. That might have been the case.

Q. As a general proposition have you ever fired anybody?

A. Through sufficient evidence and inconvenience——

Trial Examiner Myers: Yes or no.

A. That might be.

Trial Examiner Myers: Did you? Yes or no. That is all.

(Testimony of Martin Ader.)

A. That might be, a long, long time ago.

Trial Examiner Myers: But you don't remember any?

A. I don't remember any particular instances that I have or when I have.

Q. (By Mr. Wright) Well, now, on a coastwise voyage, Captain, is it customary with captains to list the crew in the log?

A. In the log book?

Q. Yes. A. Mostly.

Q. I beg your pardon?

A. In the coastwise trade?

Q. Yes.

A. Well, in later years, the new regulations coming out, it is coming into a practice.

Q. It is becoming good practice to list the crew in the log book on coastwise voyages? A. Yes.

[1496]

Q. You do list them in the log book on foreign voyages? A. Yes, sir.

Q. Now, Captain, let's suppose it this way: Suppose a foreign trip. Is the log required to reflect the character, the good qualities or the bad qualities, of a seaman? A. Not necessarily.

Q. You think that is not required?

A. Not necessarily. It is more or less eliminated since the discharges don't require it. I don't have to put it in. I may.

Q. You may do it, but you don't have to?

A. But some say I do. We might do it for our

(Testimony of Martin Ader.)

own memorandum, because when their discharges had to show it, then we had it, but we have no discharges columned for any record, special characters of the person since the new issues came out.

Q. How about on coastwise?

A. Well, coastwise——

Q. (Interrupting) The same way?

A. We have the same form.

Q. The same log book? The same kind of log book?

A. I mean the discharges. They don't require it. Otherwise I should have it in my log book. I do carry the records and it is very customary to do it, but since we don't have to fill in or show any special character of the seamen, I don't feel it is of sufficient importance to carry that out. [1497]

Q. You don't do it on coastwise voyages?

A. No, sir. [1498]

CARL C. TRANBERG,

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Give the reporter your name and address please.

A. Carl C. Tranberg, 37 Forty-fifth Street, Port Arthur, Texas.

Q. (By Mr. Van Dusen) Mr. Tranberg, are you

(Testimony of Carl C. Tranberg.)

employed on any of The Texas Company ships?

A. Yes, sir.

Q. What ship? A. "Nevada."

Q. What is your job on that ship?

A. Chief officer.

Q. Chief mate? A. Yes, sir.

Q. How long have you been chief mate on the "Nevada"? A. Four years and three months.

Q. Four years and three months?

A. Yes, sir.

Q. Prior to that time were you employed on any other ship of The Texas Company?

A. The "Washington" and "Dungannon."

Q. What was your office on the "Washington"? [1516]

A. I was second officer; and was mate three trips, relief trips.

Q. On the "Dungannon"?

A. Second mate.

Q. About how long? A. Two years.

Q. Were you on any other ships of The Texas Company prior to that time?

A. I was on the towboat "American," New York Harbor.

Q. What were you on that ship?

A. Chief officer, mate.

Q. How long were you on the tug?

A. Three months.

Q. And were you on any other vessels of The Texas Company before that time?

(Testimony of Carl C. Tranberg.)

A. No, sir.

Q. How long have you been on the sea, Mr. Tranberg? A. Approximately 28 years.

Q. Twenty-eight years? A. Yes, sir.

Q. How did you start, as ordinary seaman?

A. Started as a deck boy on a school ship, "Viking."

Q. As deck boy on a school ship?

A. Yes, sir.

Q. Where was that? [1517]

A. On a school ship, "Viking."

Q. About when was that?

A. That was in——

Q. Can you just trace what happened since then?

A. Of course I got on merchant ships, and I started in as a seaman, sailing before the mast, up until 1921. I became a licensed man in 1921.

Q. What ship were you on then?

A. The first ship I was on was the ship by the name of "Lakefair," South Atlantic Maritime Company.

Q. And then?

A. And then I was with the Strawn Shipping Company, out of Savannah, Georgia; and South Carolina Steamship Company; the Tampa-Inter-ocean; Trusdale, "La Fonte"; and Gulf Refining Company.

Q. Yes.

A. C. D. Mallory, all tankers also, and the Sa-

(Testimony of Carl C. Tranberg.)

vannah Line.

Q. What were you on the C. D. Mallory?

A. I was third mate on the "Ardmore." I was on the Savannah Line, an ocean steamship company.

Q. Officer on that ship?

A. Quartermaster and third mate. American Line, Clyde Line, Fall River Line, New England Steamship Company; and I have been on a schooner, I have forgotten the company; and also a brigantine, and I have also forgotten that company. That is before the mast. And The Texas Company. That is all I can remember right now.

Q. Were you ever an ordinary seaman?

A. Well, I was an ordinary seaman in a sense of the word, but when I first went to sea, we didn't have any such thing as a sea ticket and so forth. Everybody was a seaman, and shipped as a sailor, understand?

Q. I see.

A. Of course, the A. B. tickets came out somewhere around 1915.

Q. Now, Mr. Tranberg, as chief mate of the "Nevada" what are your duties?

A. My duties are the upkeep of the ship, in the deck department, of the hold of the ship, mast, smoke stack, main deck, below decks, holds, and so forth; paint, scrape, chip rust, keep paint work clean, and painted, and so forth.

(Testimony of Carl C. Tranberg.)

Q. Are you second in command to the captain?

A. I understand I am in command of the vessel when the captain is absent.

Q. Are you his chief assistant while he is there?

A. Yes, sir.

Q. Do you keep any records of what goes on on the ship?

A. I keep a record. We ordinarily keep a log book, all ships. You keep a record of weather conditions, barometric pressure, and so forth, temperatures, and anything that goes [1519] along with the working of the ship, cargo, and so forth.

Q. You are in direct charge you say of the deck department?

A. Yes, I am, in a way, in direct charge, and, on the other hand, I take my orders from the master of the ship.

Q. How many men are there in the deck department?

A. The deck department, including everybody?

Q. Yes.

A. The master, three officers, three quartermasters, three A. B.'s, three ordinaries and a boatswain.

Q. And a boatswain? A. Yes, sir. [1520]

Q. Now, what in general are the duties of the second and third mate?

A. The second and third mate. Of course, the second mate he is generally known as the navigating officer and he is in charge of all navigational instruments and besides that he assists the captain with

(Testimony of Carl C. Tranberg.)

the navigation of the ship, and otherwise in port he will either take his orders from the captain of the ship or he will help me, if he is needed.

Q. What about the third mate?

A. Well, the third mate he assists the captain or the mate or the second mate if necessary.

Q. Are there different shifts for the first, second and third mates?

A. Different watches, yes. The second mate's watch is from 12:00 to 4:00, a. m. and p. m., and the third mate's watch is from 8:00 to 12:00, a. m. and p. m., and the chief officer's watch, is generally speaking of course, from 4:00 to 8:00 a. m. and p. m.

Q. Who is your second mate?

A. Mr. Hopper.

Q. How long has he been second mate?

A. Right offhand I will say he has been second mate there for three years; a little better than three years; three years and three months; something like that.

Q. On the "Nevada"? [1521] A. Yes, sir.

Q. Who is the third mate? A. Mr. Kelly.

Q. How long has he been third mate?

A. A couple of years; something like that; nearly.

Q. Now, tell us briefly what the duties are of the A. B.'s under your jurisdiction in the deck department?

A. The A. B.'s takes their orders directly from

(Testimony of Carl C. Tranberg.)

the boatswain, who in turn takes his orders off of me, and his duties will be, like I say either chipping rust, washing paint, painting, painting over the side, painting the houses and smoke stacks and masts, taking care of the ship in general and if there is anything in the ship to be done every A. B. is requested to do it, like splicing lines and so forth; wires.

Q. Can you give orders directly to the A. B.'s?

A. Yes, I can.

Q. How does a man qualify to become an A. B.?

A. He is supposed to have a certain amount of experience before the mast before he can obtain an A. B.'s ticket. I forget. Some has what they call one year certificates. They have so-called blue tickets and green tickets. Well the blue tickets is one or two years. I have forgotten. The green tickets, you have to have three years' before you can obtain them.

Q. What does he have to produce to show he is a qualified [1522] A. B.?

A. Well, first of all he has to stand his vision test; that is for color blindness; and they ask him several questions pertaining to seamanship aboard the ship and in some cases they might give him a piece of line to throw an eye splice or a short splice; something like that. When I got my ticket I was never requested to do it, so I don't know whether they all do it or not.

(Testimony of Carl C. Tranberg.)

Q. When an A. B. comes on board what does he show you to prove he is a qualified A. B.?

A. When an A. B. comes aboard to report for duty on his ship it is necessary for him to prove to me that he is an A. B. seaman by showing me his able-bodied seaman's certificate and also his life-boat certificate and also his certificate of service or book, discharge book, if he has one. Some has and some don't.

Q. Now, what are the duties of an ordinary seaman?

A. The ordinary seaman, he chips rust, paints a little bit, if he is able to. Some of them can't and you don't let them do it of course, and general work around the deck.

Q. To be an ordinary seaman do you have to have any experience? A. Not necessarily.

Q. What does an ordinary seaman have to show you when he comes on board?

A. Certificate of service or his book, discharge book. [1523]

Q. Does he have to show you his certificate of identification?

A. As to his citizenship and nativity and so on, yes.

Q. Is it the duty of the A. B.'s and the boatswain to direct the ordinary seamen and assist them in their work?

A. It is the duty of the ordinary seaman as a rule to assist the A. B.'s in their work and the boatswain.

(Testimony of Carl C. Tranberg.)

Q. Is it the duty of the A. B. to keep the ordinary seaman?

A. If he wishes to do so. That is entirely up to him, you know.

Q. What happens if an ordinary seaman is unable to do a particular job?

A. An ordinary seaman who is not able to do a particular job aboard a ship? Well, I don't see as anything would happen to him, outside of telling him to go ahead and learn it.

Q. Well, who teaches him?

A. Oh, I don't know.

Q. Do you ever teach him yourself?

A. He would have to get it off the A. B.'s, the quartermasters, or the boatswain. Yes, I have. At times I have.

Q. Now, what is the duty of the boatswain?

A. Well, the duty of the boatswain is to carry out the orders laid out as to the work by me in the morning and he goes ahead and carries out those orders by telling his men what to do, his A. B.'s and ordinaries. [1524]

Q. His A. B.'s and ordinaries?

A. His A. B.'s and ordinaries.

Q. What are the duties of the quartermasters?

A. The quartermaster's duty is to steer the vessel.

Q. How many of those do you have?

A. We have three.

Q. Now, for those A. B.'s, boatswains, ordi-

(Testimony of Carl C. Tranberg.)

naries and quartermasters do you have watches or shifts?

A. Yes, sir, the same as the mates. Everybody is on watch.

Q. Tell us about that?

A. Well, we have a quartermaster, an A. B., an ordinary and the officer in charge of the watch on duty at all times.

Q. At all times? A. Yes, sir.

Q. Now, how about when the ship is in port? Do you change those requirements?

A. When we get into port as a rule we break watches around noon if we can. We break watches around noon and we all go on day work. Of course, if we stay in port at night time everybody is off in port at night time, because we always manage it so they all put in eight hours in the day.

Q. Does somebody remain on the ship at night time?

A. Yes, sir, it is necessary for a licensed officer, a licensed engineer to remain aboard a ship and of course all the time we have a pumpman aboard the ship. [1525]

Q. Do you always have a quartermaster on board? A. A quartermaster, yes, sir.

Q. Are any of the A. B.'s required to remain on board?

A. Yes, sir, required to remain aboard if it is necessary for the safety of the ship.

Q. Now, Mr. Tranberg, were you chief mate of the "Nevada" in January of this year?

(Testimony of Carl C. Tranberg.)

A. Yes, sir.

Q. Do you recall where the "Nevada" went about that time?

A. I think we were on our way to Spain. [1526]

Q. Do you recall what ports in Spain you stopped at during that trip?

A. We stopped at La Corona, Bilbao, and Las Pasjes.

Q. How long did you stop at La Corona?

A. La Corona? I think we got in there of an evening and we stayed there all day and the next morning we got orders to proceed to Bilbao.

Q. Was there any shore leave at that port?

A. No.

Q. You then went to Bilbao?

A. Then we went to Bilbao.

Q. How long does it take to get to Bilbao?

A. Something like six hours. Five or six hours. I have forgotten. Something like that.

Q. How long were you at Bilbao?

A. We stayed in Bilbao—let's see? I think something like four days. Nearly four days. Something like that.

Q. Was there any shore leave at Bilbao?

A. Yes.

Q. Was there any shore leave the first day?

A. To my knowledge as far as I can remember, I don't think we were permitted to go ashore right away. I have forgotten now whether we got shore leave the first day or not, but I know there was some

(Testimony of Carl C. Tranberg.)

sort of argument about going ashore. The captain got shore leave. Of course the military authorities— [1527] they had martial law at that time and they had soldiers guarding the shore and they gave us orders that nobody could go ashore. That is all there was to it.

Q. Did the captain later get shore leave?

A. Yes, sir.

Q. And did members of the crew go ashore?

A. Yes, sir.

Q. Did you go ashore?

A. I went ashore the last evening we were there. I was ashore about an hour or an hour and a half; something like that; on the dock.

Q. Now, Mr. Tranberg, the next stop was at Pasjes, you say? A. Pasjes.

Q. How long did it take to go from Bilbao to Pasjes? A. Approximately six hours.

Q. How long were you in Pasjes?

A. Three or four days.

Q. Three or four days? A. Yes.

Q. Was there shore leave granted at that point?

A. None at all.

Q. What is that? A. None at all.

Q. Why not?

A. Again we had martial law. The soldiers were standing [1528] on the shore with rifles on their shoulders waiting for somebody to go ashore.

Q. Those were the only three ports you touched in Spain? A. That is right.

(Testimony of Carl C. Tranberg.)

Q. Did the vessel then return to Port Arthur or do you recall any other port at which it stopped?

A. Let's see now? I think we stopped somewhere and picked up a load of crude and came into Port Arthur with it. I am not sure though. Things like that is quite a while ago.

Q. You think you stopped somewhere and picked up a load of crude and came into Port Arthur with it?

A. We usually do, but then once or twice we have come into Port Arthur light.

Q. Then you did go to Port Arthur?

A. Yes, sir.

Q. Do you know approximately what time you arrived at Port Arthur? Just approximately?

A. Somewheres the latter part of February or something like that.

Q. Now after that Spanish trip was the ship in coastwise trade? A. Yes, sir.

Q. For about how long would you say? Several months?

A. Something like that. Two or three months.

Q. It was in coastwise trade, wasn't it, up through April? [1529] A. Yes, sir.

Q. Now in this coastwise trade that you were engaged in about that time what ports did you stop at?

A. Oh, we stopped at New Haven, Providence, Claymont, Anesville, Corpus Christi and maybe Cat

(Testimony of Carl C. Tranberg.)

Island, which we also call Port Texaco, Port Arthur, and Port Neches.

Q. Just on the Gulf and East Coast?

A. Yes, sir.

Q. Did you stop at Boston?

A. The ship went to Boston during my vacation.

Q. Did you stop at Charleston?

A. I have never been to Charleston on the steamship "Nevada".

Q. Now, Mr. Tranberg, do you know Mr. Buckless? A. Yes, sir.

Q. Do you recall when he first came aboard the "Nevada"? A. Well, let's see?

Q. Well, let me ask you this: Was he on the "Nevada" when you took this Spanish trip?

A. Yes.

Q. In January? A. Yes.

Q. Do you recall when he left the ship?

A. Yes.

Q. About when was that, Mr. Tranberg? [1530]

A. Somewheres around April 17 or 18; somewheres like that.

Q. Now during the Spanish trip and down through until Mr. Buckless left the ship, what was his job? A. Buckless?

Q. Yes. A. He was a boatswain.

Q. He was in charge of the A. B.'s and ordinary seamen?

A. A. B.'s and ordinary seamen, yes.

Q. Do you know Mr. Rosen, J. Gordon Rosen?

(Testimony of Carl C. Tranberg.)

A. Yes, sir.

Q. Was he on the "Nevada" during the Spanish trip?

A. Yes, sir, I think so. Yes, he was.

Q. About when did he leave the ship?

A. As I recall it, he left the ship just about the day after Buckless did.

Q. Now during the Spanish trip and until Mr. Rosen left that ship, what was his job?

A. Rosen's was an able-bodied seaman.

Q. Was he one of the A. B.'s working under Mr. Buckless? A. Yes, sir.

Q. Now, Mr. Tranberg, as chief mate do you go around the ship to observe the work of the men under you? A. Yes, sir.

Mr. Wright: Mr. Examiner, we want to object now and to put Mr. Van Dusen on notice that we are going to object [1531] if he starts leading his man as he is doing. Now he is asking him a leading question.

Mr. Van Dusen: I want to get this straight. I asked him: "Do you travel around the ship and observe the work——"

Trial Examiner Myers: You don't have to repeat the question.

Mr. Van Dusen: But I want to know whether that is a leading question.

(Discussion off the record.)

Trial Examiner Myers: I will overrule the objection, but don't lead the witness.

(Testimony of Carl C. Tranberg.)

Mr. Van Dusen: Well, may I ask in what respects that is leading?

Trial Examiner Myers: I have ruled in favor of you.

Mr. Van Dusen: But you are implying that it is leading.

Trial Examiner Myers: Will you please go ahead?

Mr. Van Dusen: Well, I want the record to show that I don't believe that question is leading.

Q. (By Mr. Van Dusen) During what time of day do you make this observation?

A. Well, generally after breakfast. Let's say around 8:30 in the morning and on down to noon and so forth and in the afternoon I usually lays down and takes a sleep and of course during my watch on deck I looks around also and in the afternoon and in the evening when I get off at 8:00 o'clock I also [1532] takes a look around the deck and sees if everything is all right; especially in bad weather when things aboard the ship is liable to break adrift and at times the men on watch does happen to see these things. [1533]

Q. Now during these trips did you or did you not have occasion to observe the conduct and behavior of Mr. Buckless? A. Yes, sir.

Q. Will you please, in your own words, describe the conduct and behavior of Mr. Buckless?

A. Yes, sir. Once in New Haven all the men was painting black over the side and Buckless—I believe

(Testimony of Carl C. Tranberg.)

he lived somewhere around Providence. He had been home. At least he told me that, and he came back aboard that morning sort of drunk. I didn't say anything. The men was working all right. So I didn't bother, but I notice that he was taking a sip out of the bottle right on. So he was walking up and down the deck, strutting his stuff.

So I said, "Buckless, what are you supposed to be doing?"

"Well," he said, "I am not supposed to be doing anything."

I said, "Why?"

"Well," he said, "I am the boatswain here. I am not supposed to *being* doing no work. I know what a boatswain is supposed to be doing."

"Well," I said, "maybe you do know what a boatswain is supposed to be doing, but on this ship the boatswain is going to have to work or I will not carry the boatswain." So I said to Buckless, "You can tell me man to man whether you are going to do this or not, because if you are not, I am not going to carry you." [1534]

So we dismissed the matter.

Another time on the way back from Spain I looks out on deck about 2:00 o'clock in the afternoon and I see the watch on deck. I believe we was chipping rust, chipping the main deck at that time. So I looks out and I see the A. B. and the ordinary seaman working and I was wondering what the boatswain was doing. I looked around and I couldn't find him.

(Testimony of Carl C. Tranberg.)

In fact, I couldn't find him. I looked all over the ship, down the cargo hold even. So I finally decided I would go in the last place, in the hospital, and I went in there and I turned the light on and here was Mr. Buckless in the top bunk sleeping and I went in and woke him up and I said, "Buck, is this the way you are putting in your time?"

"Well," he says, "I just can't do it today."

I said, "All right."

Q. Anything else on this trip?

A. And I have observed him in other ports, in Port Arthur, being drunk and coming aboard the ship drunk the day we sailed, the morning we sailed, pretty tight. As a rule, the first day out at sea Buckless would be——

Mr. Van Dusen: I didn't hear that. Will you read that answer?

(The last answer was read.)

A. (Continuing) —unable to work due to drunkenness.

Q. (By Mr. Van Dusen) Now you mentioned other ports. Take [1535] some of these other ports. How about New Haven?

Mr. Wright: Mr. Examiner, we will object to that as a leading question.

Mr. Van Dusen: Well, he mentioned the ports.

Trial Examiner Myers: All right, but don't ask him with reference to the particular port. They object to it and you will have to abide by the objection.

(Testimony of Carl C. Tranberg.)

A. Providence. In Providence I have seen Mr. Buckless come aboard and be drunk. We sail in the evening out of there. He would be drunk, and, as I said, in Port Arthur he would be drunk. I said that before.

Trial Examiner Myers: Don't drop your voice. Will you keep it up so we all can hear you?

A. Sure.

And I have also seen Mr. Buckless drunk in Bilboa, Spain, and a couple of days after leaving Las Pasjes. In fact, that was the time when I found Mr. Buckless in the top bunk in the hospital. I found him on several different occasions sleeping in the afternoon between 2:00 and 3:00 o'clock; once in his room, once in the pumpman's room, and then in the hospital. He of course at that time was supposed to be on duty.

Q. Go on. A. That is all I can recall.

Q. Do you recall any other incidents?

A. No. [1536]

Q. As boatswain, what hours was Mr. Buckless supposed to be on duty?

A. His working hours is from 8:00 o'clock in the morning until 12:00 at noon and from 1:00 till 5:00 every day except Sundays when he knocks off at 12:00 o'clock. I mean Saturdays when he knocks off at 12:00 o'clock. Of course Sunday is a holiday.

Q. How about in port?

A. That applies the same in port.

Q. During this trip did you or did you not warn Mr. Buckless about these matters?

(Testimony of Carl C. Tranberg.)

A. I did; several times. Most every time I found him I said, "Well, Buck, you had better cut it out. If you don't, you know what is going to happen. You are going to get out. I am giving you too many chances now as it is."

Q. Did you or did you not give him many chances?

A. Well, Mr. Buckless has been given chances ever since he became boatswain.

Q. About when did Mr. Buckless become boatswain? A. He made a trip as an A. B.

Q. When was that? A. Well, when was that?

Q. About when?

A. Well, it was before we went to Spain.

Q. When was he promoted to boatswain? About when? [1537]

A. Well, I'll be doggoned if I remember the month. I don't even remember the month. Let's see? I don't remember the month. If I was to tell you it would be pure guesswork.

Q. You say Mr. Buckless had been an A. B. before he was boatswain?

A. Before he became boatswain, yes.

Q. Do you recall how long he had been an A. B.?

A. A trip, I will say. Let's see? I forget whether it was one of the ordinary trips or a short trip, but anyway an average trip would take about eighteen days. I think he was aboard a short trip before he became a boatswain, though. [1538]

(Testimony of Carl C. Tranberg.)

Q. Does a boatswain get more money than an A. B.? A. Yes, sir.

Q. How much more?

A. Fifteen dollars more.

Trial Examiner Myers: Fifteen dollars a month?

A. More.

Q. (By Mr. Van Dusen) A month is that?

A. The boatswain gets a hundred dollars.

Q. Oh, he gets a hundred dollars a month?

A. Yes.

Q. What does an A. B. get?

A. Eighty-five. Yes, eighty-five. That is what it is.

Q. I show you shipping articles for the SS "Nevada" dated September 17, 1937, and ask you whether this refreshes your recollection as to when Mr. Buckless was promoted to boatswain.

A. Yes, that is right.

Q. Now, can you testify after having looked at these articles as to when Mr. Buckless was promoted to boatswain? A. November 26, 1937.

Q. Did you or did you not have occasion to observe the conduct of Mr. Buckless when he was an A. B.? A. Yes, I did.

Q. Was or was not his conduct at that time different from what it was after he became boatswain?

[1539]

Mr. Wright: Now——

Mr. Van Dusen: I said, "Was or was not * * *"

Mr. Wright: That is all right, but you can't stick

(Testimony of Carl C. Tranberg.)

“not” in there and keep it from being leading. If he wants to find out, let him ask what his conduct was.

Trial Examiner Myers: Well, reframe your question. That will overcome the objection.

Mr. Van Dusen: All right.

Q. (By Mr. Van Dusen) What was Mr. Buckless' conduct and behavior while he was an A. B.?

A. Very good.

Q. Now, Mr. Tranberg, in view of your long experience at sea, your experience with A. B.'s and with boatswains, in your opinion was the conduct and behavior of Mr. Buckless while he was a boatswain and up until the time he left the ship the conduct and behavior of a good boatswain?

A. Yes, I would say he was a good boatswain when he was sober; a good man all around when he was sober, but most of the time Buckless was always under the influence of liquor.

Q. Does the boatswain have to perform the duties of an A. B. while on duty?

A. He is required to do it. On the other hand, the boatswain of the ship does not need an A. B.'s ticket.

Q. Now during the time that Mr. Buckless was on the “Nevada” was it customary for him to sign new shipping articles [1540] every month or so?

A. We always sign new articles at the port of paying off and signing on, whichever it might be, Port Arthur and at times it has been Claymont, Delaware.

(Testimony of Carl C. Tranberg.)

Q. Now during the period of from November 17th, which was the date on the shipping articles which I just showed you, and the time Mr. Buckless left the ship on April 17th or 18th, did he sign a number of shipping articles?

A. I don't understand you.

Q. I say, from the time of these first shipping articles which I showed you there, November 17, 1937, until the time Mr. Buckless left the ship on April 18, 1938, were a number of shipping articles signed by Mr. Buckless? A. I think so, yes.

Q. Now when you first signed Mr. Buckless up on shipping articles or he first came aboard the ship, did you inquire of him whether he was a member of any union? A. No, sir.

Q. Did you or did you not inquire of Mr. Buckless whether he was a member of any union at any time when he signed articles? A. Never.

Q. Did he ever tell you that he was a member of a union? A. No, sir.

Q. Now during the time Mr. Buckless was on the ship, did he have occasion to complain or speak to you about any [1541] grievances on board the ship?

A. As far as I know, Mr. Buckless has never made any complaints or grievances to me.

Q. Did any of the members of the crew ever complain to you or submit grievances to you?

A. No, sir.

Q. Did any members of the crew ever have dis-

(Testimony of Carl C. Tranberg.)

cussions with you about overtime or other matters?

A. They have.

Q. Do you always listen to them?

A. Yes, sir.

Q. Do you try to adjust their complaints?

A. Yes, sir.

Q. Did Mr. Buckless ever discuss with you any such matters? A. Overtime matters? Yes, sir.

Q. Did he ever discuss with you any other matters pertaining to the operation of the ship?

A. Oh, yes.

Q. Were there or were there not any working rules posted on the SS "Nevada"?

A. There were.

Q. Mr. Tranberg, I show you a writing titled "The Texas Company, Marine Department, Working Conditions and Overtime Rules, Unlicensed Personnel," dated October 1, 1937, which is Respondent's Exhibit 12, and ask you if those are the [1542] working rules to which you refer?

A. Yes, sir.

Q. About when were those rules posted on the "Nevada"?

A. Oh, about the middle part of November.

Q. Where were they posted? Pardon me. What year? A. 1937.

Q. Where were they posted?

A. One set was posted in the crew's mess room, another set was posted at the petty officers' mess

(Testimony of Carl C. Tranberg.)

room, and I had a set for myself in making out my overtime sheet, to work the overtime out.

Q. Were those posted during the Spanish trip and while Mr. Buckless was on board?

A. Yes, sir.

Q. Were they posted while Mr. Rosen was on board?

A. Yes, sir.

Q. Are they now posted there?

A. They were when I left the ship.

Q. Now, Mr. Tranberg, during the time that Mr. Buckless and Mr. Rosen were on the ship, the "Nevada," did you observe any meetings of the crew?

A. No, sir.

Q. Now do you recall the date Mr. Buckless left the "Nevada"?

A. On or about April 17th or 18th; somewhere in there; [1543] 17th, 18th, 19th. I have forgotten which one of those dates. Somewhere like that.

Q. Did Mr. Buckless speak to you at that time?

A. Mr. Buckless came down the deck and says, "Well, I am fired."

So I says, "You are?"

He says, "Yes."

"Well," I says, "I will have to get me a new boatswain."

That is all that was said on that matter.

Q. Did he later leave the ship?

A. Mr. Buckless left the ship.

Q. Who gave Mr. Buckless, if you know, his certificate of discharge?

(Testimony of Carl C. Tranberg.)

A. I didn't see it, but I believe the captain did.

Q. Now was anybody present when you had this conversation with Mr. Buckless?

A. Yes, there was several fellows present there, but I have forgotten. You see, I had part of the crew there with me. They were paying off and I had some of the crew on deck. I have forgotten what we were doing; taking stores aboard or taking up a hose. I have forgotten. We were doing something. Anyway, we were right around the midships winch, anyway.

Q. Now you testified regarding Mr. Buckless' behavior on the ship while he was boatswain. Did you report those things [1544] to the captain?

A. Yes, sir.

Q. How often? A. At least three times.

Q. Now, Mr. Tranberg, was Mr. Rosen on this trip that you took to Spain? A. Yes, sir.

Q. I believe you testified before as to the date Mr. Rosen left the ship. What was that date?

A. It was the day after Mr. Buckless left the ship and that was either the 18th or 19th; something like that. [1545]

Q. What port were you in then?

A. Port Arthur.

Q. Now during the time that the "Nevada" went to Spain and until Mr. Rosen left the ship did you or did you not have occasion to observe his character and behavior while on board?

A. Of Mr. Rosen?

(Testimony of Carl C. Tranberg.)

Q. Yes. A. Yes, sir.

Q. Please describe that.

A. I will say he is a non-drinking man to my knowledge for one thing. Of course he has been aboard the ship twice. The first time he was there I always thought him to be a very good man, a good worker, you know, but the second time it seems like—you know he seemed to be a different person altogether. So I took more notice of him and it seems like he always intentionally wanted to lag behind with his work all along and also in neglecting his duty.

There was one time out at sea on the way back from Spain to the United States we had a little bad weather there. I think we were about half way across. And when I get off of duty at 8:00 o'clock, as a rule in bad weather like that I takes a look around the deck, as I said before, to see if everything is tied down and lashed and to see if nothing has broke adrift, and I always made it a rule for the man who is on stand by watch, as we call it, because one man is on the look out on the foremost part of the vessel; he has the look [1546] out; and the other man, he is supposed to be on stand by ready to relieve the other man when he is ready to be relieved. So in this case Mr. Rosen was on the stand by watch. It was about 8:15 or 8:20 when I came down. So I looks around and don't see anybody on the stand by watch on the lower deck amidships. So I looks around and goes aft and looks in

(Testimony of Carl C. Tranberg.)

the sailors' forecastle. I don't see Rosen in there. So I walks around the aft part, around the steering engine, and comes around to the starboard side of the passageway to the pumpmen's room and I looks in there. Mr. Rosen was in there playing cards while on duty, not dressed. He had on an undershirt and a pair of pants; looked to me like it was pajamas; white pants, like pants you would use to sleep in.

And so I called him out and I says, "Rosen, aren't you on duty?"

He said, "Yes, sir."

So I says this, "This is a fine place to be on duty, isn't it?"

Well, he just looked at me.

I said, "Go on and get your clothes on and come out and stand your watch as you are supposed to do."

So I noticed about 8:30 he was on duty.

Trial Examiner Myers: You say this was on the way back from Spain? A. Yes, sir. [1547]

Q. (By Mr. Van Dusen) Are there other instances?

A. Another instance was another case just like it. I goes aft to see the reason why Rosen is not on duty and I looks in the sailors' forecastle and Mr. Rosen at that time was in his underwear writing; either writing a letter—I don't know what kind of writing he was doing. I didn't go in the forecastle. I stuck my head in and called him and said, "Rosen, you are on watch. You had better get your clothes on and stand your watch."

(Testimony of Carl C. Tranberg.)

Then besides that I noticed Rosen when he would be working on deck from 8:00 to 12:00, he would come out and work a while and drop his tools and go back and take a smoke every half hour or so, take a smoke and get a drink of water, come around, and come out again.

Besides, at 10:00 o'clock we have coffee time.

Q. Go on.

A. Of course he would be doing that while everybody else would be working.

Trial Examiner Myers: What trip was this on?

A. Well, I don't exactly know that.

Trial Examiner Myers: This was not on the Spanish trip?

A. No, that was before; before that.

Q. Go ahead.

A. So I told Rosen he had better do a little better than that, "Because," I said, "if you don't I am going to get some- [1548] body else in your place."

So finally one day in Port Arthur on the day of his dismissal, as I recollect it was 10:00 o'clock in the morning when everybody went back to get their coffee, including the boatswain—not Buckless, but another boatswain—and Rosen was back aft having his coffee with the other men. I noticed when the other men turned to again—we usually take fifteen or twenty minutes for coffee, you see. So all the other men was out working. So I didn't see Rosen come out. So I thought "I will go back and see why

(Testimony of Carl C. Tranberg.)

Rosen is not out with the other fellows."

In the crew's mess room we have two port holes facing forward and any one can stand at those port holes and look forward and see when anybody comes toward the aft part of the ship. [1549]

So as I walks aft I see Rosen come out of the mess room. So I hail him.

I said, "Rosen, do you think you are entitled to any more time off than anybody else aboard this ship"?

Well, he just looked at me and didn't say anything.

So I says, "I will tell you what I will do, Rosen. First," I says, "you can either finish the day up until 5:00 o'clock or you can leave at noon. I will leave that up to you. You do what you please about it," I said. "However, I will have a man in your place in the morning."

Previous to that I had spoken to the captain about dismissing this man.

Q. Was this the end of that trip?

A. That was the end of the trip.

Q. About what date was that?

A. April 19; 18th, 19th, 20th, something like that.

Q. And did you sign him up on new articles after that? A. After dismissal? No, sir.

Q. Now did these incidents happen from the time of the Spanish trip up until the time he left the ship? A. Yes.

(Testimony of Carl C. Tranberg.)

Q. Now do you recall any other occasions?

A. No, I guess that is as far as I can recall.

Q. I believe you testified that on one occasion Mr. Rosen was not at his stand by watch? [1550]

A. Yes, sir.

Q. Was it once or twice?

A. At least twice.

Q. In operating a ship like the "Nevada", is it or is it not important that a man be at his stand by watch? A. Absolutely.

Q. Why?

A. It is required by law to have that amount of men on duty for the safety of property and lives aboard the ship.

Q. What are his duties when he is on the stand by watch?

A. At that time he was on the stand by duty from 8:00 to 10:00 I believe. They fix it up between themselves at times between the A. B. and the ordinary themselves. Sometimes they work it this way: That the ordinary will take the first hour and the A. B. will take the second hour and from the second hour he will go up and relieve the quartermaster for coffee at 10:00 o'clock.

Q. While he is on the stand by watch what are his duties?

A. His duties are to stand by for a certain length of time and be on the look out for a certain length of time and to relieve the quartermaster for his coffee; take the wheel for fifteen or twenty minutes

(Testimony of Carl C. Tranberg.)

while the quartermaster gets his coffee and a smoke at night. [1551]

Q. You referred to the quartermaster. That is the man who does the steering of the ship?

A. The man who steers the ship.

Q. What do you mean by lookout?

A. A lookout is a man who the law requires to be stationed there on the foremost part of the ship, or in the crow's nest.

Q. I see.

A. And to report all lights that he observes at night, and objects, and so forth; to report it to the officer on watch.

Q. Mr. Tranberg, did you at any time inquire of Mr. Rosen whether he was a member of the union?

A. No, sir.

Q. Did he ever tell you he was a member of the union? A. No, sir.

Q. Did Mr. Rosen ever have occasion to come to you with any complaints or grievances?

A. No, sir.

Q. Did he ever have occasion to discuss with you overtime or other matters pertaining to the operation of the ship?

A. We had discussions about his overtime.

Q. Did you always listen to him?

A. Always.

Q. Did you attempt to adjust the differences?

A. Always. [1552]

Q. At the time you had your conversation with

(Testimony of Carl C. Tranberg.)

Mr. Rosen when he left the ship, did you tell him he was fired for union activities?

A. I did not.

Q. Did that have anything to do with your dismissing him? A. No, sir.

Q. Do you recall Mr. Rosen being on the "Nevada" in 1935 and 1936? A. Yes, sir.

Q. Do you recall during that time giving Mr. Rosen a special job of splicing all lines that might be broken on the voyage?

A. Mr. Rosen was never assigned to any job that any other A. B. could not do.

Q. Would you say splicing lines is or is not a special job? A. It is not a special job.

Q. Is it or not a job that an ordinary A. B. should be able to do?

A. An A. B. should always be able to do it.

Trial Examiner Myers: But do all A. B.'s?

A. All A. B.'s should be able to splice lines.

Q. Are all A. B.'s able to do it?

A. I am not able to tell you. That is beyond my knowledge.

Q. (By Mr. Van Dusen) Have you met many A. B.'s who are not able to splice lines? [1553]

A. I have not.

Mr. Wright: We object to that as a leading question.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) When Mr. Rosen left the "Nevada" in 1936, do you recall saying to him

(Testimony of Carl C. Tranberg.)

that it would be hard to get a man in his place?

A. No, sir. I never tell anybody that.

Q. Now, when Mr. Rosen signed shipping articles on the "Nevada" in January of 1938 for the Spanish trip do you recall welcoming him back to the ship?

A. I didn't quite hear you that time.

Trial Examiner Myers: Let the reporter read it back.

(The question was read by the reporter.)

A. No, sir, I don't recall that.

Q. (By Mr. Van Dusen) Do you recall at that time saying to Mr. Rosen: "You should have come back to The Texas Company before this?"

A. No, I never said that.

Trial Examiner Myers: You say you never said it?

A. I never said that.

Q. Or don't you remember saying it?

A. I never said it.

Q. Did you greet him when he came aboard the ship?

A. I greet everybody.

Q. In a friendly way? [1554]

A. Yes, sir.

Q. (By Mr. Van Dusen) Mr. Tranberg, while in Bilboa, Spain, do you remember singling Mr. Rosen out and saying to him, about 8:00 o'clock at night: "I want you to see that the deck is straightened up. Take these men with you and get the deck straightened up."

A. In Bilboa, Spain, about 8:00 o'clock?

(Testimony of Carl C. Tranberg.)

Q. Yes. A. That night?

Q. Yes.

A. 8:00 o'clock that night. No, I don't know.

Q. Do you recall that?

A. I don't recall the time, but I do recall I told him to take the men and go ahead and straighten up the lines and so forth; but I don't recall the time.

Q. Do you recall, Mr. Tranberg, on the way to Spain giving Mr. Rosen a special job making a pilot ladder?

A. Making a pilot ladder?

Q. Yes.

A. On the way to Spain? What hours a day?

Q. I don't know. Do you recall at any time?

A. I gave him a job working on it, and I knocked him off, and I finished it myself. I overdid his work.

Q. Was that a special job?

A. Well, it is a seaman's job. He did work on it, but I [1555] knocked him off, and I did the work myself, because I had to do his work all over again.

Q. I see. Mr. Tranberg, can men in the deck department swap watches, or get other men to stand their watches, without the consent of yourself or the master?

A. No, sir, they cannot.

Trial Examiner Myers: You are reading the testimony, while in port?

Mr. Van Dusen: I didn't hear you.

Trial Examiner Myers: Will you repeat it.

(The question was read by the reporter.)

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: Do you understand what I mean?

Mr. Van Dusen: I didn't hear it.

Trial Examiner Myers: Were you just reading the testimony?

Mr. Van Dusen: Yes.

Trial Examiner Myers: Wasn't that testimony about swapping jobs while the ship is in port? Am I right?

Mr. Van Dusen: Yes.

Q. While the ship is in port can they swap watches, or get other men to stand their watches, without the consent of yourself or the master?

A. They cannot.

Trial Examiner Myers: Not even the quartermaster? Do they [1556] do it? What is the custom?

A. The custom is to get a man in their place.

Q. In their place? If you have a man in your place standing your watch it is all right, isn't it?

A. If you have permission to do so, yes.

Q. If you don't have permission what happens?

A. Well, we will get a man in his place.

Q. Do you fire him?

A. You might call it that. Some would call it that, and some would call it plain dismissal; whichever way you wish to call it.

Q. You dispense with a man's services if he doesn't get permission? A. That is right.

Q. (By Mr. Van Dusen) Now, Mr. Tranberg,

(Testimony of Carl C. Tranberg.)

on the date that Mr. Rosen left the ship, which I believe you said was about April 18 or 19——

A. Something like that.

Q. Did he have a discussion with you? Did he come up and see you?

A. No, sir, he didn't see me after that.

Q. No, before he left? A. Before he left?

Q. Yes. Tell me what you said to him and what he said to you? [1557]

A. The last thing I said to Mr. Rosen was that I would have a man in his place in the morning. And he looked me, and he said no more. Yes, he said: "I will finish at noon."

Q. Did you give him a reason for that? What did you say?

A. I told him that he had neglected duty.

Q. What did he say?

A. He didn't say anything. [1558]

Q. Did you give him a certificate of discharge?

A. I did not.

Q. Did you see him after that?

A. I saw him.

Q. On the ship? A. As he left.

Q. Did you speak to him again?

A. I did not.

Q. Mr. Tranberg, do you recall on the date Mr. Rosen left the ship meeting a man by the name of Leo Hermen? A. I don't remember that.

Q. You don't recall meeting him?

A. No, sir.

(Testimony of Carl C. Tranberg.)

Mr. Van Dusen: Is Mr. Hermen here? Is he in the court room?

Mr. Wright: I don't see him.

Q. (By Mr. Van Dusen) Do you recall saying to Mr. Hermen on April 19, when he came aboard the ship—withdraw that. Do you recall asking Mr. Hermen with whom he had a conversation back in the forecastle? A. I do not.

Mr. Martin: I move that the question and answer be stricken on the ground that it is superfluous. This man does not remember meeting the man on that date.

Trial Examiner Myers: What about that? Aren't you [1559] putting the testimony in this man's mouth? He says he doesn't remember.

Mr. Van Dusen: I want to find out what he says about that.

Trial Examiner Myers: The man says he doesn't know the fellow. I will sustain the objection.

Mr. Van Dusen: Exception, please. I understand that I can't go into it?

Trial Examiner Myers: If he says he doesn't know the man.

Mr. Van Dusen: I want to be sure your ruling is excluding me from asking him whether he made the statements that Mr. Hermen said he made.

Trial Examiner Myers: It is all right, if you do it properly.

Mr. Van Dusen: That is what I want to do. I am going to quote the statements. Does your ruling

(Testimony of Carl C. Tranberg.)

exclude me from doing that?

Trial Examiner Myers: I only ruled on that one question.

Q. (By Mr. Van Dusen) Mr. Tranberg, do you recall asking Mr. Hermen with whom he had a conversation in the forecastle?

Mr. Wright: Mr. Examiner, we object, for the same reason.

Trial Examiner Myers: Now, Mr. Witness, do you remember a man employed on your boat by the name of Hermen? [1560] A. I do.

Q. Do you remember when he came aboard?

A. I remember when he shipped aboard the ship.

Q. What classification was he?

A. Able-bodied seaman.

Q. Do you remember when he came on board?

A. It was about the 18th or 19th.

Q. Of what? A. Of about April.

Q. 1938? A. 1938, yes, sir.

Trial Examiner Myers: Is that the man you are talking about, Mr. Van Dusen?

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: Proceed with your examination. I will overrule the objection.

Mr. Van Dusen: Read me the question, Mr. Reporter.

Mr. Wright: I would like the privilege, in the light of this testimony, of asking this man questions.

Trial Examiner Myers: If Mr. Van Dusen had laid the foundation for the testimony you would not

(Testimony of Carl C. Tranberg.)

have had any objections. He has laid the foundation.

Mr. Van Dusen: Read me the question.

(The question was read by the reporter.)

Mr. Wright: May we have the privilege of asking this [1561] man questions to find out if this is the man who is actually Lee Hermen?

Trial Examiner Myers: I have just finished asking him those questions.

Mr. Wright: May we ask him to describe the man?

Trial Examiner Myers: Now let's go on.

Mr. Van Dusen: Will you read the question again?

(The question was read by the reporter.)

Q. (By Mr. Van Dusen) Do you recall saying, or did you say to Mr. Hermen: "Baldy is a good man, but he let the union go to his head."

A. I never said such a thing.

Q. Did you or did you not say to Mr. Hermen: "We had a boatswain on here. He done the same thing. Every time a union man comes on board he asked him if he had a union book"?

A. I never said anything of the kind.

Trial Examiner Myers: Do you remember having any talk with this man Hermen?

A. Any talk?

Q. I mean when he came aboard.

A. I had to talk with him, because he had to show me his A. B. ticket and life boat ticket and

(Testimony of Carl C. Tranberg.)
certificate of service, you know.

Q. Do you remember what time of day he came on board?

A. I believe he reported the night before, and then went to [1562] work the next morning, if I am not mistaken. I am not so sure about that, though. But he started to work on the 19th, that morning.

Q. 19th of April, 1938?

A. I am pretty sure.

Q. He started to work in the morning?

A. Yes, sir.

Q. You are pretty sure about that?

A. Yes, sir.

Q. Do you know whose place he took, Rosen's?

A. I don't exactly remember whose place he took. Rosen was still aboard the ship at that time.

Q. Whose place was he taking, Buckless'?

A. No. I will tell you how the job happened to be open. When the boatswain got off a quartermaster went to boatswain, and one of the A. B.'s went to quartermaster, and that left an A. B. job open.

Q. (By Mr. Van Dusen) Did you or did you not at any time say to Mr. Hermen that you fired Baldy on account of union activities?

A. I never said anything of the kind.

Q. Did you or did you not at any time say to Mr. Hermen that you fired Mr. Buckless on account of union activities?

A. I didn't fire Mr. Buckless.

Mr. Van Dusen: That is all. [1563]

(Testimony of Carl C. Tranberg.)

Cross Examination

Mr. Martin: May we have a few minutes recess?

Trial Examiner Myers: Yes, sir. At the request of counsel for the Board, we will take a five minute recess.

(Short recess.)

Trial Examiner Myers: Are you ready to proceed with the witness, Mr. Martin?

Mr. Martin: Yes, we are ready.

Q. Mr. Tranberg, when did you say Mr. Buckless got aboard the "Nevada" in 1937?

A. I don't exactly remember the date. If I tell you right straight it will be all guess work.

Q. About when?

A. It was the latter part of 1937.

Trial Examiner Myers: Could you tell from any shipping articles? A. Yes.

Q. Could you tell from these?

A. Well, apparently, he must have come aboard somewhere around November 17 or 18, 16, 17 or 18.

Q. And when did he get off?

A. April 17, 18, 19, one of those three days.

Q. What year? A. 1938.

Q. 1938? [1564] A. Yes, sir.

Q. How long a period would that be that he was on the boat? A. How long a period?

Q. Yes.

A. That would be approximately five to six months.

(Testimony of Carl C. Tranberg.)

Q. Now during that period where did the boat go?

A. Oh, we went up to New Haven once, I believe twice; but I am sure we went there once while he was aboard.

Q. Now, Mr. Tranberg, will you try to think and tell me where the boat went while Mr. Buckless was on it before it went to Spain, and where it went after it returned from Spain?

A. I believe we made a short trip before we did go to Spain, or a couple of short trips.

Q. From where to where?

A. That is it. I tell you I don't remember. I just don't remember, that is all.

Trial Examiner Myers: Would it refresh your recollection if you——

A. It is a pretty hard thing to do to dates.

[1565]

Q. He didn't ask you the date?

A. Like I said, New Haven. Probably to Cat Island.

Q. You say probably? A. Yes.

Q. You mean the boat stopped——

A. From Cat Island——

Q. That is where the boat stopped?

A. That is where the boat stopped at times to pick up crude oil.

Trial Examiner Myers: Once it went to Corpus Christi?

(Testimony of Carl C. Tranberg.)

A. She did, but I wouldn't say whether she did that before or after.

Q. He wants to know what trip the boat made while Buckless was on.

A. Yes. We made the Spain trip while he was on.

Mr. Martin: How about Boston?

A. I was on vacation at that time.

Q. And Galveston?

A. I believe Mr. Buckless joined the ship in Galveston.

Q. Where did the boat go immediately after he joined it? A. To Corpus Christi, I believe.

Q. And then where?

A. Maybe to Cat Island; I don't remember.

Q. And then where?

A. It might have been the Spanish trip after that now.

Q. When did you take your vacation? [1566]

A. On December 15, I got off on vacation, and I returned to the ship on January 9.

Q. When did you say Mr. Buckless got on?

A. I said it appears as though he got on the ship on November 16 or 17.

Q. Now, can you tell us where the boat went between November 16, when Mr. Buckless got on, and a month later, December 15, when you got off for your vacation?

A. Let's see. I do believe we went to Corpus Christi, to Cat Island and New Haven, and from

(Testimony of Carl C. Tranberg.)

New Haven to Houston. That is where I got off.

Q. You got off at Houston?

A. At Houston.

Q. Now, you say you came back aboard on January 9?

A. Yes, sir.

Q. Where did you come back aboard?

A. Port Neches, Texas.

Q. Where did the boat go from there?

A. To Spain.

Q. Immediately?

A. That was the first trip after I came on board.

Q. That was the first trip?

A. Yes, sir.

Q. Now, after the boat got back from Spain, where did it go on its next trip? [1567]

A. Well, I just don't remember that.

Q. When did it get back from Spain?

A. The latter part of January—I mean the latter part of February, or the first part of March. I think it was the latter part of February; that is when it was.

Q. Now after the steamboat got back from Spain, Mr. Buckless was on it for approximately a month and a half, is that right; from about March 1st, to April 18, 1938?

A. Yes, sir.

Q. I wish you would try to think and tell us where the boat went during that period of six weeks.

A. Went to New Haven for once. I am certain of that; and also went to Providence one trip. I am certain of those two instances. I don't remember whether Mr. Buckless went with us to Claymont,

(Testimony of Carl C. Tranberg.)

but I do believe he did; I don't remember.

Q. Do you remember any other port it stopped during that period? A. Port Arthur.

Q. Port Arthur? A. Yes, sir.

Q. Anywhere else? A. Port Neches.

Q. Now did you say Mr. Buckless returned drunk at New Haven at a time when he had been somewhere to his home? [1568]

A. I said he returned aboard the ship drunk. I don't know where he was at, whether he was home or not. That I don't know.

Q. Did you make some reference to his home?

A. He said he wanted to go home, which I suppose he did; I don't know. I stayed aboard the ship.

Q. Now, when was that, before or after the Spanish trip? A. After.

Q. How do you know? A. I was there.

Q. You were there? A. Yes, sir.

Q. You were also on the boat when it stopped at other ports, before and after the Spanish trip?

A. Excluding the time from November 15 to January 9.

Q. Now, as you have been sitting there on the stand, have you found some difficulty in remembering just where the boat went before and after the Spanish trip?

A. Not since I am sitting here, but I did beforehand.

Q. It is very easy then for you to tell me exactly

(Testimony of Carl C. Tranberg.)

what ports the boat stopped at?

A. Not so very easy, no.

Q. Can you do it?

A. Some of them I might be able to.

Q. Trip by trip? [1569]

A. I will do my best.

Q. All right. Then start with when Mr. Buckless got on at Galveston, and take it trip by trip and tell us exactly where the boat went.

A. All right. As I said before, I believe we went to Corpus Christi, and Cat Island and New Haven, and Houston and then I got off.

Q. How many trips would that be?

A. That would be Corpus Christi, Cat Island, and New Haven, three round trips; and Port Arthur, of course, in between.

Q. That is Galveston to Corpus, to Port Arthur?

A. Yes, sir; and from Port Arthur to Cat Island, and back to Port Arthur; and Port Arthur to New Haven, and back to Houston. I got off in Houston on November 15th.

Trial Examiner Myers: You forgot to mention Corpus Christi.

A. Didn't I say one trip to Corpus Christi?

Q. (By Mr. Martin) Yes, you included Corpus Christi on the first trip. A. That is right.

Q. Galveston to Corpus, to Cat Island, to Port Arthur. Is that the first trip?

A. That is right.

(Testimony of Carl C. Tranberg.)

Q. The second trip, Port Arthur to Cat Island, to Port [1570] Arthur?

A. Yes, sir, Port Arthur or Port Neches. I forget which one.

Q. And the third trip, Port Arthur to New Haven, to Houston? A. Yes, sir.

Q. And you got off? A. Yes.

Q. Then was the Spanish trip?

A. As I returned aboard the ship we were getting ready to make the Spanish trip.

Q. Yes. Now when you got back from Spain, where did the boat go then? Where did it go the first trip?

A. I believe, I think we went to New Haven; I think so.

Q. You are not sure? A. No, I am not.

Q. Then where from New Haven?

A. Maybe Port Arthur, or maybe Amesville, or Corpus Christi, for a load, and then into Port Arthur.

Q. You are not just sure? A. Sir?

Q. You are not just certain? A. No.

Q. Then after it returned to Port Arthur that trip, where did it go next? [1571]

A. I think we made a trip to Providence.

Q. Are you sure?

A. Not absolutely. As I said before, I will do my best.

Q. You are experiencing some difficulty?

A. I am, yes.

(Testimony of Carl C. Tranberg.)

Q. Where else? Where did it go from Providence?

A. We probably went back either to Amesville or Corpus Christi to pick up a load of crude and bring it in to Port Arthur or Port Neches. [1572]

Q. But you are not certain?

A. I am certain we came back to Port Arthur, but I am not certain which one of those ports we went into first.

Q. Now where did the boat go after it got back to Port Arthur at the end of that trip, while Mr. Buckless was still aboard?

A. I don't remember.

Q. How many trips did the boat take between the time you returned to Port Arthur at the conclusion of the Spanish trip and when Mr. Buckless got off April 18, 1938?

A. Will you kindly repeat that?

Mr. Martin: Will you read it?

(Question read.)

A. Maybe three or four, maybe five trips; I don't know; something like that.

Q. Three or four or five trips?

A. Yes, somewhere along there.

Q. Would it be any less than three?

A. No, I don't think it would.

Q. Would it be any more than five?

A. It might be.

Q. Well, in a period of six weeks—strike that, please. The period we are considering is a period

(Testimony of Carl C. Tranberg.)

of six weeks. About how many trips would the boat normally make coastwise during six weeks? [1573]

A. Oh, that would probably be two trips.

Q. Two? A. Yes.

Q. Possibly three?

A. Hardly. You see it will take anywhere from 18 to 21 days to make a trip and back to New Haven, you know. From that you may be able to draw your own conclusions.

Q. Of course we are trying to get this just as precise as possible. A. Yes.

Q. Now you say normally it would take about two trips during six weeks, but that during this particular six weeks' period it took between three and five trips? A. Yes.

Q. Now how do you explain that?

A. Well, you see you make a short trip once in a while; to Corpus Christi, you can say that is a day's run. And also going to Cat Island is a short run. We make that in about 20 hours. Of course they are unusually short trips. And that might be the reason why three trips were made in six weeks.

Q. Now during this period did you make any trips to Port Neches or to Cat Island?

A. We went to Port Neches, I believe, yes; but I don't remember whether Buckless went to Cat Island with us or not. [1574] I don't remember that.

Q. Do you believe that during this period the boat went either to Port Neches or to Cat Island?

(Testimony of Carl C. Tranberg.)

A. We went to Port Neches of course, and certainly we went to Port Arthur.

Q. During this six weeks' period? A. Yes.

Q. Now have you named to me all the ports you believe the boat touched while Mr. Buckless was aboard? A. I might have.

Q. You are not sure? A. No.

Q. Now on direct examination did you say something about the boat having stopped at Claymont, Delaware? A. Yes, sir.

Q. Have you mentioned that to me as you have been on either of these trips?

A. I forgot what I did mention to you, whether I did or not.

Q. If the boat stopped at Claymont, when did it stop at Claymont, while Buckless was aboard?

A. I don't remember that.

Q. Do you remember whether it was before the Spanish trip or after?

A. It would be after, if he did.

Q. After? [1575] A. Yes, sir.

Q. Now if you are not certain just where the boat stopped while Mr. Buckless was aboard, as you have just testified, and if you are not certain whether the boat stopped at Claymont, Delaware, at all and, if at all, whether it was before or after the Spanish trip, how can you be certain that Mr. Buckless came aboard drunk at New Haven before or after the Spanish trip?

A. Well, while you say that, that reminds me

(Testimony of Carl C. Tranberg.)

that it was after the Spanish trip?

Q. What was after?

A. When we were in New Haven.

Q. Were you there before the Spanish trip?

A. I am not certain of that.

Q. I thought you said you were there once before and once after the Spanish trip?

A. I said I will try to recollect it as well as I can, which I have done; and I also said I would do my best to tell you where we were.

Q. I see. Now are you also trying to do your best in telling us when and where Mr. Buckless came aboard drunk? A. Absolutely.

Q. Now are you doing any more than doing your best to tell us when he came aboard and where drunk?

A. I am doing my best to tell you the truth.

[1576]

Q. You are experiencing some difficulty?

A. Not in telling the truth.

Q. No. I appreciate that, Mr. Tranberg. It is simply that it is a little difficult you find to remember just what happened, and where, and when, in order that you can tell the truth?

A. As to dates, yes.

Q. And places?

A. No, I remember the places. We would be in New Haven for one, and Port Arthur for another.

Q. You remember it was New Haven that he came aboard drunk. You remember the place, but you

(Testimony of Carl C. Tranberg.)

are not sure of the date? A. That is it.

Q. You are not sure whether it was before or after the Spanish trip?

A. This New Haven incident, I do believe it was after.

Q. Mr. Tranberg, if I asked you to could you enumerate the ports that Mr. Buckless came aboard the boat sober while he was shipping on the "Nevada"? A. I can enumerate one.

Q. When he came aboard sober?

A. Yes, sir.

Q. Do you think you could enumerate them all?

A. All, no. [1577]

Q. Will you tell us about that one?

Trial Examiner Myers: When Mr. Buckless shipped in Galveston, is that the only time he came aboard sober? A. As far as I know.

Q. (By Mr. Martin) That is the only time he came aboard sober? A. As far as I know.

Trial Examiner Myers: Did you see him every time he came aboard?

A. I didn't see him every time, because he probably came aboard when I was asleep, you understand.

Q. But the times you did see him come aboard he was always drunk?

A. I have seen him report for duty drunk, yes.

Q. (By Mr. Martin) You say the only time you saw him come aboard sober was in Galveston?

A. Galveston, Texas.

(Testimony of Carl C. Tranberg.)

Q. To your knowledge, is that the only time he ever did come aboard sober?

A. Oh, I wouldn't say that. I wouldn't say it was the only time. But I said I will enumerate one instance when he did come aboard sober.

Q. Now could you enumerate some others?

A. Yes, I think I can. Once upon a time in Port Arthur I think he did come aboard sober, once, while an A. B., of [1578] course.

Trial Examiner Myers: Not while a boatswain?

A. While an able-bodied seaman.

Q. When was he promoted to boatswain?

A. On November 26, 1937.

Q. He was only on board nine days before he was promoted? A. That is right. [1579]

Q. And after he was appointed——

A. I saw him in port twice in that nine days sober.

Q. And after that you never saw him come on board sober?

A. It seems to me like after Buckless became boatswain he turned to drinking all of a sudden. I don't know why.

Q. But you didn't reduce him in rank?

A. No, I didn't do that.

Q. (By Mr. Martin) Now, you say he came aboard sober at Galveston once? A. Yes.

Q. And then he came aboard at Port Arthur sober how many times? A. Once.

Q. Now, will you please relate to us what other

(Testimony of Carl C. Tranberg.)

ports he came aboard in a sober condition, when you either saw or subsequently learned that he had come aboard sober?

A. I don't know of any others.

Q. You mean these are the only two ports that he came aboard sober on?

A. To my knowledge.

Q. To your knowledge? A. Yes, sir.

Q. Now, do you mean by that that every time he went ashore, except on those two occasions, one of which was when he first entered the boat, he came back to the boat drunk? [1580]

A. I don't know whether he did or not at all times. I said, I might have been asleep some times when he came aboard ship.

Q. He was boatswain after leaving Port Arthur the first time, wasn't he? A. Yes, sir.

Q. And as boatswain when did he come on duty?

A. He was supposed to report for duty at 8:00 o'clock in the morning.

Q. I thought you said you were on the 12:00 to 4:00 watch? A. I never said such a thing.

Q. Excuse me. I believe you said you were on the 4:00 to 8:00 watch? A. That is right.

Q. And while you are in port you are on the day watch?

A. While I am in port I am on day work, yes, sir.

Q. Is 8:00 o'clock in the morning in the day time?

(Testimony of Carl C. Tranberg.)

A. 8:00 in the morning until 4:00 in the afternoon.

Q. So if Mr. Buckless was due to report for work at 8:00 o'clock in the morning the chances are you would be up and functioning?

A. Yes, sir.

Q. And on duty?

A. On duty at 8:00 o'clock.

Q. So if he reported for work in a sober condition, coming from ashore, on a specific morning at 8:00 o'clock you would know it, wouldn't you?

[1581]

A. Most decidedly.

Q. Would you know that? A. Yes.

Q. But you say to your knowledge the only places that he reported for duty in a sober condition were once at Galveston and once at Port Arthur? A. Yes, sir.

Q. And all the other times during the period of five and a half months, no, during the period of four and a half months that he was a boatswain, every time he reported for duty when the boat was at dock and he had been out the night before, and he reported for duty at 8:00 o'clock in the morning, he was drunk?

A. In other words, he would be under the influence of liquor.

Q. But not drunk?

A. Well, whichever you call it. Is a man drunk if he is under the influence of liquor or not?

(Testimony of Carl C. Tranberg.)

Q. I thought you said before he was drunk every time?

A. I didn't say he was drunk every time, but I said there were only two occasions I could be certain of when he came aboard sober.

Q. Well, have you related for us then all the ports at which he came aboard drunk?

A. I might have, and I may not have. [1582]

Q. Have you listed all the ports at which he came aboard sober? A. Maybe I have.

Q. Strike that. All right, let it go. Have you listed all the ports at which, after being there, he came aboard and reported for duty the next morning at 8:00 o'clock in a sober condition?

A. To my knowledge I have.

Q. Both as an A. B. and as a boatswain?

A. Both as A. B. and boatswain.

Q. Now, have you listed for me every port that he has reported for duty at 8:00 o'clock in the morning following a night out in a drunken condition?

A. Well, I don't know whether I have or not.

Q. Well, could you name any others?

A. Others which?

Q. What did you say? A. Others of what.

Q. The other ports at which he reported in a drunken condition at 8:00 o'clock, following a night out? A. No, no.

Q. Now, in your mind is there a distinction between being under the influence of liquor and being drunk?

(Testimony of Carl C. Tranberg.)

A. No. I think if a man is under the influence of liquor he is drunk. [1583]

Q. Now, will you please tell me the names of all ports at which Mr. Buckless reported for duty at 8:00 o'clock in the morning, following a night out, while under the influence of liquor?

Mr. Van Dusen: Mr. Examiner, I think he has asked that question about a dozen times.

Trial Examiner Myers: Well, let him answer this once, and that is the end of it.

Mr. Martin: Mr. Examiner, we are distinguishing between drunkenness and under the influence of liquor.

Trial Examiner Myers: Well, will you answer that question. Just answer that question. Do you remember the question?

A. May it be repeated.

Trial Examiner Myers: Read the question please. (The question was read by the reporter.)

A. Well, he reported for duty at 8:00 o'clock in the morning practically in all ports except the port of Bilbao.

Q. In an intoxicated condition?

A. Under the influence of liquor.

Q. Is that except Port Arthur and Galveston?

A. No, Port Arthur, is included.

Q. You mean except once in Port Arthur?

A. Except once in Port Arthur. [1584]

Q. Now, Mr. Tranberg, did you say you are not certain whether the trip to New Haven, when you

(Testimony of Carl C. Tranberg.)

say Mr. Buckless came aboard drunk, was before or after the Spanish trip?

A. I am pretty certain.

Q. Pretty certain, but are you absolutely certain? A. No, I won't say that.

Q. Now you testified that he did come aboard in an intoxicated condition in New Haven?

A. Yes, sir.

Q. And that he did come aboard in an intoxicated condition at Providence?

A. I didn't say that for certain at Providence. I said I believed so.

Q. Would you say that now for certain or not for certain? A. No, I won't say that for certain.

Q. Why not?

A. Because I don't for certain remember.

Q. I beg your pardon?

A. Because I don't remember.

Q. Well, haven't you been refreshing your recollection about the times Mr. Buckless was on the "Nevada"?

A. Why I know when he was on the "Nevada".

Q. I mean during the last few days haven't you been thinking about this case while you have been here ashore? A. Not a great lot. [1585]

Q. Not a great lot? A. No.

Q. Now on your direct examination when Mr. Van Dusen was asking you questions you said that

(Testimony of Carl C. Tranberg.)

Mr. Buckless came aboard the boat drunk in Providence? A. I did.

Q. Now are you going to change your story?

A. No, sir.

Q. You still say he came aboard the boat drunk in Providence? A. I think he did.

Q. But didn't you say positively before?

A. I don't remember whether I said that or not.

Q. But now you are not certain in any case?

A. I am certain he came aboard drunk.

Q. Where?

A. New Haven maybe once or twice.

Q. Providence?

A. And maybe Providence, but practically in most every port he got to for that matter.

Q. Well, now, you say you know he came aboard drunk once or twice? A. Sir?

Q. You say you knew he came aboard drunk once or twice?

A. Oh, once or twice, three or four or five times.

Q. Well, how about those many ports the boat stopped at [1586] during the five and a half months he was boatswain?

A. Well, how about it? What of it?

Q. Well, as a matter of fact, Mr. Tranberg, aren't you just guessing at all this?

A. Well, I told you I tried to recollect it the best I could before you started. I told you that.

Q. Yes, I appreciate you are trying. But still it is just a guess.

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: The point is did you make any record of the times he was drunk?

A. A written record?

Trial Examiner Myers: Yes.

A. No, sir, I didn't.

Trial Examiner Myers: Is there anything in the log about the boatswain being drunk?

A. Not in my log book.

Trial Examiner Myers: I mean in the captain's log?

A. I don't know.

Trial Examiner Myers: But you reported those instances to the captain?

A. Yes, sir.

Trial Examiner Myers: How many times did you report them?

A. At least three times.

Trial Examiner Myers: You don't know what the captain did about it, do you? [1587]

A. Sir?

Trial Examiner Myers: Do you know what the captain did about it?

A. No, sir, I don't.

Trial Examiner Myers: Do you know whether he reprimanded Buckless?

A. No, sir, I don't. Yes, I do know. I know he told Buckless that he would have to cut it out; he would have to stop drinking.

Q. (By Mr. Martin) Did you hear him tell him that?

A. Well, I heard him tell him that. I was sitting in my room and I heard the captain telling him.

(Testimony of Carl C. Tranberg.)

Q. Where was the boat when you heard the captain telling him this?

A. Probably out at sea, maybe.

Q. Just probably? Don't you know?

A. I think it was out at sea.

Q. Where? Where was it going?

A. Oh, coming back to the United States. Probably out in the middle of the Atlantic.

Q. From where? A. From Spain.

Q. You said that Buckless stayed on the boat six weeks after you got back from Spain?

A. Something like that. [1588]

Q. Well, now, why didn't you put it in a log book when a petty officer of a ship is drunk?

A. A petty officer. Why didn't I? I have never been requested to do it.

Q. Do I understand that you have a separate log book as mate and the captain has a separate log book as captain on your boat?

A. I have a log book pertaining to the general work of the ship; weather conditions and barometric pressure, temperature.

Q. Is that generally known as the smooth log?

A. Yes.

Q. Then do you also have an official log on your boat?

A. I don't know anything about an official log. I have no official log.

Trial Examiner Myers: Have you ever seen one on board? A. I have seen one, yes, sir.

(Testimony of Carl C. Tranberg.)

Q. (By Mr. Martin) Then you know that there is one there? A. Maybe there is.

Q. Do you as mate ever make any entries in the official log? A. I do not.

Q. Do you as mate ever read the official log?

A. I do when I am requested to sign it.

Q. Do you know of your own knowledge whether there are any entries concerning Mr. Buckless' drunkenness in the official [1589]

A. I do not.

Q. You don't know? A. I do not.

Q. Are there in your log, the smooth log?

A. No, sir.

Q. Wasn't it considered of sufficient importance to put in your log book, either of your log books on the boat, that a petty officer of the boat came aboard drunk every time the boat docked except twice during a period of five and a half months?

A. Did I consider it important enough to do that?

Q. Yes.

A. I don't know. Maybe it is and maybe it isn't.

Q. In any case you didn't make any entries?

A. I didn't.

Q. Well, now, Mr. Tranberg, in this smooth log that you keep do you put down where the boat goes from trip to trip?

A. Yes, it is marked in the log book when and where we leave and when we get back and things like that.

(Testimony of Carl C. Tranberg.)

Q. So if you made an examination of the log book you could learn, could you, whether or not the "Nevada" ever stopped at Providence while Mr. Buckless was aboard?

A. I could learn it through that.

Q. Would you care to do that?

A. It wouldn't make any difference to me.

[1590]

Q. Is the log book available here?

A. In Port Arthur now? I don't know. I don't know. Maybe it is; maybe it isn't.

Trial Examiner Myers: Where is the vessel?

A. The vessel is in New Haven, Connecticut, right now, I believe.

Q. (By Mr. Martin) Is a copy of the log book on a coastwise journey left at or sent to the Port Arthur office?

A. When my log book is full I turn it into the captain of the ship.

Q. And what does he do with it?

A. I don't know.

Q. As a matter of fact, do you know, Mr. Tranberg, that the "Nevada" never did touch Providence or stop at Providence while Mr. Buckless was aboard?

A. May I have that question repeated?

Trial Examiner Myers: Will you read the question, please, Mr. Reporter?

(The last question was read.)

A. No, I wouldn't say I know that we didn't touch Providence while he was aboard. I wouldn't say that. I think he was.

(Testimony of Carl C. Tranberg.)

Q. (By Mr. Martin) Of course you would be willing to admit, would you, that if the "Nevada" never did stop at Providence while he was aboard he could scarcely come aboard at Providence in a drunken condition? [1591]

Mr. Pipkin: I think that is argumentative.

Mr. Martin: No, I don't think it is.

Trial Examiner Myers: Will you allow me to make the rulings? Don't get into an argument with counsel. I warned you about that a couple of times.

Will you please answer the question?

A. Yes, sir. What is it?

Trial Examiner Myers: Read the question.

(The last question was read.)

A. Oh, if the ship didn't go to Providence while Mr. Buckless was there, it is almost impossible, isn't it, if the boat didn't go there?

Q. Yes. A. Oh, I see.

Q. Now, Mr. Tranberg, would you be willing to admit also that if the log book doesn't show that the "Nevada" ever stopped at Providence while Mr. Buckless was aboard that in fact the "Nevada" never did stop there while he was aboard?

A. If it is not recorded in the log. The ports we go to would be recorded in the log book.

Q. Yes. A. You can trust on that.

Q. Now, Mr. Tranberg, did you say that Mr. Rosen while he was aboard the "Nevada" was one of your crew who worked for you? [1592]

A. He was an able-bodied seaman, yes, sir.

(Testimony of Carl C. Tranberg.)

Q. Did you keep pretty close watch on his activities and his habits?

A. On his and everybody else's.

Q. You knew pretty much what they were doing?

A. In the line of work, yes.

Q. Did you say that habitually while he was working on his 8:00 a. m. to 12:00 noon shift Mr. Rosen would go back aft and take a half hour or so off and drink some water and have a smoke?

A. I never stipulated any time.

Q. You never stipulated any time?

A. No, sir.

Q. What did you say?

A. I said while everybody else would be working he would quit and go back aft, take a drink of water, take a walk around, hang around. Whether he smoked or not I don't know, because I never hung around there to see what he was doing, but I watched to see when he got out again, but he would kill five or ten minutes back there three or four times between 8:00 and 10:00 and 10:00 and 12:00.

Trial Examiner Myers: Did you ever ask Buckless whether Rosen was assigned to any particular work that he had to finish when he went out to get a cigarette?

A. No, sir, I never asked that. At that time we had a [1593] pretty big job. In fact, we were chipping rust on the deck of the ship.

Trial Examiner Myers: That was coming back from Europe?

A. Yes, sir.

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: You had a long time to do it?

A. Oh, it would take about eight months to do it.

Trial Examiner Myers: It wasn't in a special rush?

A. Well, of course while you are doing that everything else is going to bats.

Trial Examiner Myers: Everybody else on board was pitching in doing a lot of work except Rosen, is that it?

A. Everybody else was doing their part.

Trial Examiner Myers: And Rosen was taking a smoke every hour or so?

A. It looked that way to me, yes, sir.

Q. (By Mr. Martin) How often would he go back there to take this smoke?

A. Maybe once or twice, maybe three times, maybe four times, in the forenoon, besides coffee time.

Q. During working hours? A. Yes, sir.

Q. Three or four times every morning?

A. Nearly.

Q. Habitually? A. Yes, sir. [1594]

Q. Would he always go back to the same place aft? A. Yes.

Q. Where were you standing so that you could see him?

A. I would probably be amidships; I would probably be down on the deck working with him.

Q. Did he ever come back and sort of throw his

(Testimony of Carl C. Tranberg.)

cigarette into the sea just before he started to work?

A. No, he didn't. He didn't do that.

Q. He didn't? A. No, sir.

Q. Did he ever strew his cigarettes around the deck before he started working?

A. No, he never did that.

Q. How come?

A. How come? Why don't you know the ship is carrying explosives?

Q. Where did he put his butts? Where did he put his cigarette butts?

A. Why I don't know where he put them. I don't know, the fact that I am outside and he is inside.

Q. Where is he allowed to smoke?

A. In the quarters.

Q. He is allowed to, is he?

A. Yes, sir.

Q. Have you ever been back there and seen him?

[1595]

A. I have been back there, yes.

Q. Have you seen him back there? Have you seen him smoking back there?

A. I think he smokes a pipe.

Q. You think he smokes a pipe?

A. I believe so. I don't know.

Q. I thought you said he was back there smoking cigarettes?

A. I didn't say cigarettes, cigars, or a pipe. I said "a smoke." In fact, I don't know whether he

(Testimony of Carl C. Tranberg.)

would be smoking. I take it that he would be doing that.

Q. As a matter of fact, have you ever seen him smoking?

A. I think I have seen him smoke a pipe.

Q. Are you sure? A. I said "I think."

Q. Well, he doesn't smoke.

A. He doesn't?

Q. No.

A. Well, that is your information.

Q. Now you guessed about where the boat was going? A. Yes, sir.

Q. And you guessed about where Mr. Buckless got aboard drunk. Now aren't you also guessing about how often Mr. Rosen went back for a smoke?

A. No, I am not guessing about that at all.

Trial Examiner Myers: You just got through saying you [1596] don't know whether he did smoke or not. A. Sir?

Trial Examiner Myers: You just got finished saying that you don't know whether Rosen went back for a smoke or not.

A. That is what I said.

Trial Examiner Myers: So you are guessing when you did say he used to go back and smoke every hour or half hour?

A. Oh, yes, that is right.

Mr. Martin: Mr. Examiner, could we conveniently recess for lunch at this point?

Trial Examiner Myers: Is that agreeable with

(Testimony of Carl C. Tranberg.)

you, Mr. Van Dusen?

Mr. Van Dusen: That is all right. When will we reconvene?

Trial Examiner Myers: 1:15, gentlemen. Will you be ready to proceed at 1:15?

Mr. Martin: How about 1:45?

Trial Examiner Myers: That is out of the question. 1:30.

(Thereupon, a recess was taken until 1:30 o'clock p. m.) [1597]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

CARL C. TRANBERG

resumed the stand and testified further as follows:

Cross Examination (Continued)

Q. (By Mr. Martin) Mr. Tranberg, did I hear you say before lunch on direct examination that you repeated warned Mr. Buckless to stop being drunk aboard the boat? A. Yes, sir.

Q. How often did you say you warned him?

A. At least three times.

Q. At least? A. Yes, sir.

Q. Did you warn him every time you saw him drunk?

A. Not every time, but at least three times I told him: "Buckless, you will have to cut it out."

Q. You mean at least three times during the four and a half months that he was a boatswain?

(Testimony of Carl C. Tranberg.)

A. Yes, sir.

Q. Now where did these warnings take place, where was the boat?

A. One, I can tell you specifically, was in New Haven; I think the last trip we made to New Haven. That was after the Spanish trip. [1598]

Q. When else?

A. Then I warned him in Port Arthur. Leaving Port Arthur he would be under the influence of liquor, drunk, and I told him the same thing.

Q. Before or after the Spanish trip?

A. After the Spanish trip.

Q. Did you ever warn him before or during the Spanish trip?

A. I warned him during the Spanish trip, on the way home.

Q. Was that the third time you had warned him?

A. Yes, I think it was.

Q. The third time?

A. Which time was the third time?

Q. Which time was it?

A. The third time, that was the last time in New Haven.

Trial Examiner Myers: Did I understand you, Mr. Tranberg, that Mr. Buckless was discharged for drunkenness? A. As far as I know, yes, sir.

Q. Did you tell him that, or did the captain say?

A. If I told you the captain said so I am only saying hearsay.

(Testimony of Carl C. Tranberg.)

Q. So far as you know, the captain told him he was fired for drunkenness? A. Yes, sir.

Q. (By Mr. Martin) Did you ever tell him he was fired for drunkenness? [1599]

A. I did not.

Q. Now you said Mr. Buckless was sober while an A. B. and drunken while he was a boatswain, is that correct? A. Yes, sir.

Q. Now why didn't you demote him, Mr. Tranberg, to an A. B. after you discovered he was a drunken boatswain?

A. Because I believed that the reason for demoting a man in his position, the only reason for that could be incompetence.

Q. You can fire him for anything, but you can't demote him for anything except incompetence?

A. If he is not able to do his work as he is supposed to do it.

Q. Mr. Tranberg, did you know that Mr. Buckless was a member of the union?

A. I did not.

Q. Never knew that? A. Never knew that.

Q. When did you learn it?

A. I never knew it.

Q. Don't you know it now? A. I don't.

Q. That he was a member of the Maritime Union?

A. I don't know anything about it.

Q. Haven't you ever heard while this case has been pending [1600] that he is a member of the Na-

(Testimony of Carl C. Tranberg.)

tional Maritime Union? A. I have not.

Q. Do you think he is a member of any union?

A. I don't think anything about it.

Q. Do you know now whether he is a member of any union?

A. I don't know anything about it.

Q. Did you say that you customarily made the rounds of the boat and made observations as to what was going on? A. Yes.

Q. Kept pretty good tract of what was going on?

A. As good as I could.

Q. When did you say you make these observation tours?

A. I wouldn't make them at any special time; whenever I saw fit to do so, and whenever I had time to do so I would.

Q. At various times during the day and night?

A. During the day and evening. Of course at 9:00 or 10:00 o'clock I would usually be asleep, you see.

Q. Would you make these tours while you were on watch? A. No, I wouldn't.

Q. Not while you were on watch.

A. No, sir.

Q. After you got off watch?

A. After I got off watch.

Q. After you got off watch at 8:00 in the evening, would you? [1601] A. Yes, sir.

Q. At 8:00 p. m., anywhere from 8:00 to 9:00 o'clock? A. Yes, sir.

(Testimony of Carl C. Tranberg.)

Q. Now during the whole time, during Mr. Buckless' period on the "Nevada" and Mr. Rosen's period on the "Nevada" while you were making these evening observation tours would you ever see the men assembled, having what might appear to be a meeting? A. At no time.

Q. You never did? A. I never saw it.

Q. In the crew's mess room?

A. I never saw any of it.

Q. Did you ever hear about a meeting being held aboard the boat? A. I did not.

Q. I believe you said that you reported to the captain at least three times that Mr. Buckless had been under the influence of liquor? A. Yes.

Q. Now at the most, how many times did you report that to the captain?

A. At the most what?

Q. How many times did you report that to the captain? A. At least three times. [1602]

Q. How about at the most?

A. Well, I will say just about three times.

Q. When was the last time you made such a report?

A. The last time was after getting away from New Haven. That was the last time that I warned Mr. Buckless.

Q. Mr. Tranberg, did you or did you not consider it a serious offense for a man to be drunk aboard the vessel? A. A serious offense?

Q. Yes.

(Testimony of Carl C. Tranberg.)

A. That depends on which way you look at it, and which way you mean. [1603]

Q. Was it serious enough to fire him for it?

A. Oh, yes.

Q. Then wouldn't you think it would also be serious enough to merit being recorded in the log?

A. I said some would, and some would not. It is not required to enter that in the log.

Q. You mean if you wanted to keep it secret you wouldn't?

A. Well, you can if you wish to.

Q. Will you tell me again what you understand the rule to be concerning getting somebody else to stand your watch, to substitute for you, without the permission of the mate or the master?

A. There is no such provision.

Q. Can a man at sea get somebody else to stand his watch if he paid him, even though he doesn't get the permission of the master?

A. No. He is not performing his duty if he does.

Q. Every time?

A. Yes, sir, provided he is not sick.

Q. Provided he is not sick? A. Yes, sir.

Q. Now, regardless of the rule, is it or is it not a custom for seamen to get somebody to substitute for them, without getting permission?

A. With the permission. [1604]

Q. Is it customary for them to do it without permission? A. Not to my knowledge.

(Testimony of Carl C. Tranberg.)

Q. Does it ever happen?

A. It has happened, but as a rule the man has usually been dismissed.

Q. How many years have you been a mate?

A. Approximately ten years.

Q. During that time how many men have you dismissed for missing a watch?

A. In ten years?

Q. For missing a watch when somebody else stood it for him?

A. Well, that is pretty hard to say, in ten years. Anyway, I will say five, anyway.

Q. Five times? A. Yes.

Q. Have you yourself ever fired anybody for missing a watch when somebody else stood it?

A. I have. That is, I have consulted the captain about it and gotten permission to fire the man.

Q. You have? A. Yes, sir.

Q. Now, did you fire Mr. Buckless for missing a watch coming over from Spain?

A. I didn't fire Mr. Buckless.

Q. Did you recommend to the captain that he fire Mr. Buckless? [1605]

A. I did at one time, in New Haven.

Q. But that had nothing to do with missing the watch coming over from Spain?

A. I don't know what watch Mr. Buckless missed.

Q. I thought you said he missed one?

A. Mr. Buckless?

(Testimony of Carl C. Tranberg.)

Q. Yes.

A. Mr. Buckless didn't stand any watch.

Q. Do you refer to a boatswain's period of being on duty as day work? A. As a day man.

Q. As a day man? A. Yes, sir.

Q. Now, was Mr. Buckless fired for missing any time when he was supposed to have been working day when coming home from Spain?

A. If I sit here and tell you why he was fired I will be telling you hearsay, because I didn't hear the reason why he was fired.

Q. You didn't fire him?

A. I didn't fire him at any time.

Q. Did you recommend to the captain that he be fired? A. I did at one time.

Q. Did you recommend to the captain that he be fired for missing this time coming home from Spain when he should have [1606] been at work?

A. I did not.

Q. What would you say he was fired for, as a possible cause for his dismissal?

A. I didn't recommend his dismissal for that reason.

Q. In any case, Mr. Buckless was not dismissed at the conclusion of that Spanish trip, was he?

A. No.

Q. Now, what reason did you give the captain in recommending that Mr. Buckless be fired?

A. For being drunk and unruly in New Haven.

Q. Now, when did you recommend to the cap-

(Testimony of Carl C. Tranberg.)

tain that Mr. Buckless be fired for being drunk and unruly in New Haven?

A. On the very day he was drunk.

Q. You mean in New Haven?

A. To have him replaced by a man when we reached Port Arthur, anyway.

Q. Do I understand you confuse dates, and that you are not just sure when this was in New Haven?

A. I don't remember the special date.

Q. Now, was Mr. Buckless fired at the conclusion of that New Haven trip?

A. No, I don't think he was.

Q. Why not? A. I don't know. [1607]

Q. How many trips later was he fired?

A. I think it was the trip after that, I believe.

Q. Can you tell us, Mr. Tranberg, what a certificate of experience is?

A. A certificate of experience as to what?

Q. You used the phrase "certificate of experience" during direct examination. You said something about a man showing you a certificate of experience when he came aboard?

A. I said certificate of service.

Q. Will you tell us what a certificate of service is?

A. That is a certificate they obtain before the local inspectors in place of a discharge book.

Q. Instead of a Copeland book?

A. That is it.

(Testimony of Carl C. Tranberg.)

Q. Aren't you referring to a certificate of identification instead of a certificate of service?

A. It might be.

Q. Just a different word perhaps?

A. It may be.

Q. Now, Mr. Tranberg, when is the last time you can say you saw Mr. Buckless come aboard the boat drunk?

A. The last time I believe was in Port Arthur on the trip previous to his dismissal.

Q. Now, will you tell us why you happened to hit on that date, instead of some other, since you confuse dates so readily? [1608]

Mr. Williams: Mr. Examiner, I think that remark ought to be stricken out.

Trial Examiner Myers: Reframe your question.

Q. (By Mr. Martin) What makes you think it was the beginning of the last trip the date you last saw him drunk in Port Arthur?

A. I don't think so. I don't know even it was his last trip.

Q. You don't know it was his last trip?

A. No, sir.

Q. If you say it was the beginning of his last trip that you last saw him drunk coming aboard, why didn't you recommend to the captain right then that he be discharged for being drunk?

A. For the same reason that I have not recommended everybody else to get fired for getting drunk.

(Testimony of Carl C. Tranberg.)

Q. You mean others were getting drunk too on the boat? A. Yes, sir.

Q. You did not dismiss them or recommend that they be dismissed? A. No.

Q. Well, was drinking a kind of customary thing on the "Nevada" at that time?

A. Some times.

Q. How about it when Mr. Buckless was on? [1609]

A. Well, he was doing his share of it.

Q. But you didn't discharge the others who were doing their share of it?

A. I didn't discharge anybody.

Q. Did you recommend to the captain discharging anyone? A. No. [1610]

Trial Examiner Myers: Did you report anybody to the captain?

A. No, I didn't report it, because it is not necessary. It probably might be seen by other people, so I didn't report anything.

Q. The only one you reported to the captain was Buckless? A. Yes, sir.

Q. (By Mr. Martin) Mr. Tranberg, would you say that there was more drinking on the "Nevada" during the period Mr. Buckless was on than there was during an equal period on any boat, most any boat? A. Yes, I would say that.

Q. There was more? A. Yes, sir.

Q. Would you say that there was more drinking while the "Nevada" was in and around Spanish

(Testimony of Carl C. Tranberg.)

ports than there is customarily on a boat?

A. Well, that is pretty hard to say, because there are some of those ports where you couldn't go ashore.

Q. There was quite a little drinking over there?

A. Oh, yes, there was quite a little drinking over there, all right.

Q. Mr. Tranberg, did you see anybody drunk at La Corona, Spain? A. When? [1611]

Q. During the trip Mr. Buckless was on; you say the last trip, 1938. A. Yes.

Q. Did you see anybody drunk there?

A. No.

Q. Did you see anybody drunk at Bilbao?

A. Yes, sir.

Q. Who?

A. I saw Buckless drunk in Bilbao for one; and I saw a fellow by the name of Tibbett, who was an A. B.

Trial Examiner Myers: Anybody else?

Q. (By Mr. Martin) Anybody else?

A. I also saw the first pumpman drunk.

Q. What was his name? A. Lee Holmes.

Q. Anybody else?

A. That is all I can remember right now.

Q. Mr. Tranberg, did you see Lee Holmes come aboard drunk? A. Yes, sir.

Q. From Bilbao port? A. Yes, sir.

Q. You saw it? A. Yes, sir.

Q. What day was that? First, tell me what time

(Testimony of Carl C. Tranberg.)

of day it was. [1612]

A. Oh, I would say maybe 10:00 or 11:00 o'clock.

Q. In the morning?

A. Something like that, yes, sir.

Q. You were there and saw him come aboard?

A. I was on deck, yes, sir.

Q. You were on deck? A. Yes, sir.

Q. Did Mr. Holmes come aboard from the dock?

A. No, sir.

Q. What did he come aboard from?

A. A row boat.

Q. Who else was in the row boat?

A. Mr. Buckless.

Q. Who else?

A. I don't remember anybody else; the boatman.

Q. The boatman? A. Yes, sir.

Q. Do you remember the boatman?

A. Yes, sir.

Q. Mr. Buckless and Mr. Holmes were on the little boat? A. That is right.

Q. Do you remember whether anybody else was in the little boat? A. I do not.

Q. Would you say positively that nobody else was in the [1613] little boat?

A. I wouldn't say positively, no.

Q. Would you say positively that nobody else came aboard from the little boat?

A. No, I wouldn't say that.

Q. Now if you searched your recollection very hard—— A. Yes.

(Testimony of Carl C. Tranberg.)

Q. —and try very hard to be truthful——

Mr. Pipkin: Mr. Examiner, we object to the question of counsel, and move that it be stricken.

Trial Examiner Myers: Grant the motion.

Q. (By Mr. Martin) Are you quite sure, Mr. Tranberg, there was nobody else that came aboard from that little boat?

A. I said I was not quite sure.

Q. What do you think?

A. I don't think. Somebody else gets paid for thinking.

Mr. Williams: Mr. Examiner, if he is not sure, what he thinks does not make any difference.

Trial Examiner Myers: What is your best recollection?

A. My best recollection is that I saw Buckless and the pumpman coming on board.

Q. (By Mr. Martin) Where were you when Mr. Holmes came aboard? A. I was on deck.

Q. Were you near where Mr. Holmes—how did Mr. Holmes get [1614] from the little boat onto the large boat? A. Up a pilot ladder.

Q. Were you near the top of the pilot ladder when Mr. Holmes came aboard? A. Yes, sir.

Q. Near enough to know whether——

A. Near enough to see that he didn't fall off of the ladder.

Q. You helped him, you mean? A. Yes.

Q. And yet you don't remember who else was in the little boat? A. Mr. Buckless.

(Testimony of Carl C. Tranberg.)

Q. How did Mr. Buckless get from the little boat into the big boat?

A. Just like Mr. Holmes did.

Q. How near were you to the top of the ladder when Mr. Buckless came on the boat, the big boat?

A. When he came out of the little boat I would say maybe two feet away from the ladder.

Q. Two feet? A. Yes.

Q. Were you at that time close enough to be able to know whether anybody else came up that pilot ladder at that time?

A. I guess I was close enough, but I just didn't notice it. [1615]

Q. And now did you see anybody go down the pilot ladder? A. No, I didn't.

Q. Do you know whether anybody did go down the pilot ladder back into the little boat?

A. I do not.

Q. Would you say nobody did?

A. I will say I don't know.

Q. What happened to the pilot ladder as soon as the last man got on board?

A. Nothing happened to it.

Q. Did they just leave it hanging there?

A. Yes.

Q. Mr. Tranberg, do you ever drink?

A. Yes.

Q. You do? A. Yes.

Q. Did you ever drink aboard the boat?

A. No, sir.

(Testimony of Carl C. Tranberg.)

Q. Even socially, while the boat is in port?

A. I don't drink on the job.

Trial Examiner Myers: Does that mean when you are supposed to be on the boat at all?

A. When I am on the ship, I don't drink.

Q. Never touch it on the boat? A. No, sir.

[1616]

Q. Beer? A. No, sir.

Q. Wine?

A. I drink a little wine when I am on shore, and maybe a little whiskey.

Q. You don't drink any intoxicating liquors on board at any time? A. No, sir.

Q. (By Mr. Martin) Now do you ever have liquor aboard vessels? A. No, sir.

Q. Have you ever had liquor delivered to your room aboard the boat? A. No, sir.

Q. On this trip to Spain while the boat was anchored for dock at Pesages, to your knowledge, was any liquor delivered to your room?

A. No, sir.

Q. Did you ask anybody to deliver any liquor to your room at Pesages? A. I did not.

Trial Examiner Myers: Did you find any liquor in your room? A. No, sir.

Q. (By Mr. Martin) Was any in your room?

[1617]

A. No, sir.

Q. Was any delivered to your room?

A. No, sir.

Q. Now, Mr. Tranberg, do you ever pass out

(Testimony of Carl C. Tranberg.)

any liquor? A. I do not.

Q. For anybody aboard your boat to drink?

A. I do not.

Q. Does the captain of your vessel ever pass any liquor out? A. I don't know.

Q. To be drunk aboard your boat?

A. I don't know.

Q. Would you say he does not?

A. I have never seen him do it.

Q. You have never seen him do it?

A. No, sir.

Q. Did you ever hear him talk about doing it?

A. No, sir.

Q. Did you ever hear him say he didn't do it?

A. No, sir.

Q. Do you allow the mates aboard your vessel to do any drinking?

A. That is beyond my jurisdiction.

Q. The second and third mate?

A. That is up beyond my jurisdiction. [1618]

Trial Examiner Myers: When the captain is aboard the ship? A. Yes, sir.

Q. (By Mr. Martin) That is the captain's jurisdiction? A. Absolutely.

Q. Have you ever recommended to the captain that any mate on the "Nevada" be dismissed for drinking? A. I have not.

Q. Has it ever come to your attention that one of your mates on the "Nevada" drinks on board ship? A. Not to my knowledge.

(Testimony of Carl C. Tranberg.)

Q. If it ever did come to your attention that one of your mates drink, would you recommend that he be dismissed?

Mr. Williams: Mr. Examiner, that is asking for a conclusion, something that may happen in the future.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) Now, Mr. Tranberg, you have named, I believe, men who to your knowledge was drunken in Bilbao while Mr. Buckless was on the boat. Now will you please name anybody else who to your knowledge was drunken anywhere else, anybody on the "Nevada", while Mr. Buckless was on the boat.

A. Would you kindly repeat that question?

Trial Examiner Myers: Read the question to him.
(The question was read by the reporter.)

A. Tibbett. Well, that is all I can recall, so far, Tibbett. [1619] Besides Pesages, besides Bilbao, is that what you mean?

Q. Yes.

A. Well, Buckless, Holmes, Tibbett. So far as I can recollect, that is about all.

Q. Where does Tibbett work now, do you know?

A. I do not. [1620]

Q. Was Mr. Tibbett fired for drinking?

A. I believe he quit. I am not sure. I think he did quit.

Q. Was Mr. Holmes fired for drinking?

A. No, sir.

(Testimony of Carl C. Tranberg.)

Q. Where does Mr. Holmes work now?

A. On the SS "Nevada".

Q. Still aboard? A. Yes, sir.

Q. Does Mr. Holmes still drink while he is aboard the ship?

A. He might, but he isn't a habitual drinker.

Q. Mr. Tranberg, when the vessel is at sea during the 8:00 to 12:00 watch in the evening, am I correct in believing that there is on duty besides the mate a quartermaster, an ordinary seaman, and an A. B.?

A. You are right.

Q. And the quartermaster is supposed to be at the wheel?

A. Yes, sir.

Q. And either the A. B. or the ordinary seaman is supposed to be on look out?

A. Yes, sir.

Q. Now where is the third man supposed to be?

A. The third man?

Q. The man on watch.

Trial Examiner Myers: The other man on watch, he means. [1621]

A. He is supposed to be any place designated to him by the officer in charge.

Q. (By Mr. Martin) Well, am I right that there is a man at the wheel, the quartermaster?

A. Yes, sir.

Q. And then there is a man on lookout who may be either the A. B. or the ordinary seaman?

A. Yes, sir.

Q. And the other one, where is he supposed to be?

(Testimony of Carl C. Tranberg.)

A. Somewhere on watch where the officer can get him if he needs him. The stand by watch they call it.

Q. Now did you say that once on the way from Spain when Mr. Rosen was supposed to be on watch that you couldn't find him? A. Oh, I found him.

Q. Did you have any trouble finding him?

Trial Examiner Myers: He wasn't in his right place, is that what you mean?

A. No trouble at all in finding him.

Q. (By Mr. Martin) Did you say that happened only once? A. Twice.

Q. Where else did it happen?

A. It happened on the way over to Spain and it happened on the way back.

Q. Now was Mr. Rosen fired at the conclusion of that Spanish trip? [1622] A. No, sir.

Q. Did you fire Mr. Rosen? A. Yes, sir.

Q. Did you fire him for not being readily available on those two occasions on the trip to Spain?

A. I fired him for that, including general neglect of duty.

Q. But you didn't fire him at the conclusion of that trip? A. No, sir.

Q. Why didn't you?

A. Because I thought maybe he would get over that and see his mistake; you know, better himself.

Q. Now did it ever happen with Mr. Rosen after you got back from Spain?

A. Incidents like that?

(Testimony of Carl C. Tranberg.)

Q. Yes, after you got back here. You said it happened only twice.

A. Yes, I said that. And it didn't happen after that.

Q. It didn't happen after that?

A. Not like that, no.

Q. Then apparently he did reform, is that correct?

A. He did in that one matter, but at the same time he didn't stand his watch midships where I told him to stand after that. He kept on sitting his watch out in the forecastle back aft, regardless of how the weather was. If it was bad or [1623] good, it didn't make any difference.

Q. I thought you said this happened only twice.

A. Twice, yes, sir; incidents when I caught him back there when we had bad weather when he was playing cards on watch.

Q. You say at the two times you caught him you had bad weather? A. Yes, that is right.

Q. Do I understand you correctly that it didn't happen at all after the boat got back from Spain?

A. What didn't happen?

Q. Mr. Rosen failing to be where he should be while he was on watch from 8:00 to 12:00 in the evening?

A. Yes, it did happen after that all right, but the only thing is I overlooked that on account of the weather being good. There wasn't any immediate danger, so I overlooked it.

(Testimony of Carl C. Tranberg.)

Q. Mr. Tranberg, how long was Mr. Rosen aboard the boat?

A. How long was he aboard the boat?

Q. Yes, in 1938?

A. Oh, he was aboard the ship maybe—well, let's see? I think he shipped a little after Buckless did.

Q. Three or four months, was he on?

A. Yes, he was on that long all right. Three months anyway.

Q. Now did you say this morning that while Mr. Rosen was [1624] on the "Nevada" in 1935 he was a good worker?

A. When did I say that?

Q. Did you say that this morning?

A. Did I?

Trial Examiner Myers: Did you say it?

A. The question wasn't asked.

Q. (By Mr. Martin) Well now when Mr. Rosen was on the "Nevada" in 1935 was he a good able-bodied seaman?

A. Very good.

Q. A good worker?

A. Yes, sir.

Q. Did you say that while he was on the "Nevada" in 1938 he seemed to want to lag in his work intentionally?

A. It seemed that way to me.

Q. When did you first discover that intention or seeming intention of his?

A. On the very first trip he was aboard.

Q. Why didn't you fire him at the end of that trip?

A. Well, I didn't fire him because I wanted to give the man a chance to straighten himself up.

[1625]

(Testimony of Carl C. Tranberg.)

Q. Now, Mr. Tranberg, you had known Mr. Rosen while he was on the boat in 1935, had you?

A. I had known him when he was there, yes.

Q. At that time had you respected him as an earnest able-bodied seaman?

A. I respected him as well as I respected any other A. B. seaman.

Q. Had you learned that he carried out his duties as told to?

A. At what time?

Q. In 1935.

A. He did very well.

Q. Had you at that time formed an opinion as to his character?

A. At that time I thought he had a very good character.

Q. Now if a man with a very good character starts out intentionally to do something would you say or would you not say that he doesn't customarily change his intention?

Mr. Williams: Mr. Examiner, that is calling for an opinion and speculation on the part of the witness.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) You say on the very first trip in 1938 you learned or at least you felt that Mr. Rosen was intentionally trying to lag in his work?

A. Apparently. [1626]

Q. Did you honestly think he would change?

A. It looked that way to me.

Q. Knowing him as you did in 1935?

A. Yes, sir.

(Testimony of Carl C. Tranberg.)

Q. Now how long a time did you think it would take him to change?

Mr. Williams: Mr. Examiner, that again calls for speculation and an estimate on the part of the witness.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) How many trips was Mr. Rosen aboard the boat in 1938?

A. I can't tell you the exact amount of trips.

Trial Examiner Myers: How many times did he sign articles? A. I don't know.

Trial Examiner Myers: Have you got the articles there, Mr. Van Dusen?

Mr. Van Dusen: I don't know whether I have them all. There are three or four, I believe. I don't believe I have them all.

Trial Examiner Myers: How many would you say, Mr. Tranberg?

A. Well, let's see? Well, let me say four times.

Q. (By Mr. Martin) Four trips?

A. Let me say that. [1627]

Trial Examiner Myers: Four times he signed the articles.

Q. (By Mr. Martin) Oh, four times he signed the articles? A. Something like that.

Q. Now, Mr. Tranberg, when the boat was at Bilbao while Mr. Rosen was aboard did you say that you sent Rosen to take a number of men and do a certain job when the boatswain was off the boat? A. Yes, sir.

(Testimony of Carl C. Tranberg.)

Q. Were there other ordinary seamen and A. B.'s available at that time?

A. Yes, there were.

Q. But you sent Mr. Rosen to do the job?

A. Yes.

Q. You told him to do it? A. Yes.

Q. And did you do that notwithstanding the fact that you then thought that he intentionally lagged in his work?

A. No, I did that because I figured this way: Tibbett, as I say, was drunk and the boatswain was absent. Remember that leaves two A. B.'s and we have three A. B.'s aboard the ship. I merely told Rosen because he was the first A. B. I got in contact with. I probably would have told the other A. B. to do the very same thing if he had been the first man to come along.

Q. Did you think Mr. Rosen would lag at that job intentional- [1628] ly?

A. I told you once that I didn't think, but he appeared that way to me.

Mr. Williams: I don't think the witness understood that question, Mr. Examiner.

Trial Examiner Myers: Did you understand the question, Mr. Witness? A. Which question?

Mr. Williams: I suggest it be read to him.

Trial Examiner Myers: Well, we will pass on to another one.

Q. (By Mr. Martin) What time of day was this at Bilbao?

(Testimony of Carl C. Tranberg.)

A. What time of day? Oh, let's see? Well, I really don't remember the time of day when he did this, because I was up most of the whole night previous to that and then the whole day besides that, you see, so I was kept pretty busy myself and not having much time to look at my watch to see what time it was. I hardly had time to get my dinner.

Trial Examiner Myers: He means whether it was in the morning or afternoon.

A. Well, I think it was in the forenoon. I think. I am not sure. I think it was the forenoon. Yes, because that night we worked all night long trying to get the ship alongside the dock. The ship was pulling away from the dock.

Q. (By Mr. Martin) Mr. Tranberg, can you describe Leo [1629] Hermen to us, please?

A. Leo Hermen?

Q. Yes.

A. As I recollect, I think he is a blond headed fellow; blond hair, straight features.

Q. Do you remember when you first saw Leo Hermen? A. Yes, sir.

Q. When was it?

A. It was on or about the day of April 18th or the 19th.

Q. What was said in that conference or that meeting?

A. Meeting? I know of no meeting.

Q. Did you talk with him that day?

A. I talked with him on the ship, yes.

(Testimony of Carl C. Tranberg.)

Q. When he came aboard?

A. When he reported for duty aboard the ship I talked with him, yes.

Q. What did he say?

A. He said, "Here is my A. B. ticket and here is my lifeboat ticket and here is my certificate of identification," and I looked at it and I told him, "All right. The job is yours."

Q. Now are you sure that Mr. Hermen had a certificate of identification?

A. I don't remember whether he had an identification certificate or a book. He had one of the two. [1630]

Q. It might have been a book?

A. He had to have one of the two. I know that.

Q. Now you are not just sure what papers he had?

A. I am sure he had an A. B. ticket and a lifeboat ticket.

Q. Are you likewise just not certain what was said in the conversation?

A. I know what I told him. I told him he was shipped; the job was his.

Q. But you are not quite sure what papers he had with him?

A. I am sure he had an A. B. ticket and a lifeboat ticket and whether he had a book or certificate, I don't remember.

Q. Mr. Tranberg, can you tell me what a certificate of discharge is?

(Testimony of Carl C. Tranberg.)

A. A certificate of discharge? A certificate of discharge is a slip of paper denoting the length of service the man was aboard a certain ship, when he shipped, and when he was discharged.

Q. Well, what is it used for?

A. It is used for a man to prove the length of time he has gone to sea.

Q. When are they given to a man?

A. Upon his discharge. When he is paid off; dismissed; or when he leaves.

Trial Examiner Myers: It is also used to get another job?

A. Yes, they can also use it in case they wish to go for a [1631] license. They can use that to prove the time.

Trial Examiner Myers: And also to get another job on some other boat or with some other company?

A. Well, some looks at discharges and some don't.

Q. (By Mr. Martin) Who makes out certificates of discharge?

A. Captain Swanson on the Steamship "Nevada". [1632]

Q. Do you? A. Sir?

Q. Do you?

A. I told you Captain Swanson.

Q. Do you also? A. I do not.

Q. Have you ever? A. I have, yes.

Q. You have? A. Yes.

(Testimony of Carl C. Tranberg.)

Q. Do you sign them for the captain?

A. I did that one time.

Q. You did? A. Yes.

Q. Is that permissible? A. It was then.

Q. When was that?

A. That was before this new law set in about these certificates and so on.

Q. Will you tell me about the new law?

A. No, I can't tell you much about it.

Q. When was it passed?

A. Well, I think something like a couple of years ago.

Q. In 1936 some time?

A. Well, is it? [1633]

Mr. Pipkin: We suggest the Examiner can take judicial notice of when that law was passed.

A. Was it?

Q. (By Mr. Martin) Can't you tell?

A. Well, I will take your word for it.

Q. Well, now, since that new law was passed are captains the only ones under the new law who are allowed to make out certificates of discharge?

A. To my knowledge.

Q. Are certificates of discharge supposed to be signed by the seamen? A. I think so, yes.

Q. Are they valid if they are not signed by the seaman?

Mr. Williams: Mr. Examiner, I suggest this line of questioning does not touch any issue in this case. He has not touched so far any issue as to who

(Testimony of Carl C. Tranberg.)

should sign and when the law was changed.

Trial Examiner Myers: Are you going to connect this up?

Mr. Martin: Yes, I am going to connect it up.

Trial Examiner Myers: Well, I will allow it. If he doesn't connect it up I will entertain a motion to strike.

Mr. Van Dusen: May I present further objection? Whether an instrument is valid or not is a conclusion. I don't think the witness can answer it.

Trial Examiner Myers: Well, let's see what he knows. [1634]

Mr. Martin: Will you answer the question?

A. Will you read it?

Mr. Martin: Read the question please.

(The last question was read.)

A. I don't know whether they are valid or not if they are not signed by the seaman. However, there is a place for the seaman to sign.

Q. (By Mr. Martin) There is?

A. On those that I have made out.

Q. Have you made out any since the new law was passed? A. No, sir.

Q. Mr. Tranberg, did you know that Gordon Rosen was a member of a union?

A. I did not.

Mr. Williams: Now, Mr. Examiner, I don't see any connection yet. He is starting out on a new line of interrogation; whether or not Gordon Rosen

(Testimony of Carl C. Tranberg.)

was a member of a union. I move to strike out all that testimony.

Trial Examiner Myers: About what?

Mr. Williams: About whether a discharge has to be signed by a seaman to be valid.

Trial Examiner Myers: I will grant the motion.

Q. (By Mr. Martin) Mr. Tranberg, do you know whether or not Gordon Rosen is a member of a union? A. I do not. [1635]

Q. Did you ever know? A. I never did.

Q. Have you learned yet?

A. No, sir, I have not.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Van Dusen) Under Mr. Martin's questioning, Mr. Tranberg, I believe you said that you recommended to the captain that Mr. Buckless be discharged for drunkenness but that you didn't so recommend for the other men who had been drunk. Why was that?

A. Referring to Lee Holmes I guess?

Q. Yes.

A. Because I considered Lee Holmes as being a non-habitual drinker and to my knowledge Lee Holmes has only been under the influence of liquor twice. [1636]

Q. How about Tibbett?

A. Well, Tibbett made only one trip and he was drunk all the time he was on the other side, so I

(Testimony of Carl C. Tranberg.)

don't know much about that. By the way, I don't know whether his name is Tibbett or Gibbett. It is one of the two.

Q. Why did you discharge him?

A. I think he left the ship.

Q. He did? A. I think he did.

Q. How about Mr. Buckless?

A. Well, he stayed aboard that one trip.

Q. I mean why didn't you recommend his discharge?

A. Because I wanted—as I said before, Mr. Buckless as a sober man is a very efficient man and I figured this way: Maybe he will cut out some of the drinking, and rather than try to get him fired and taking a chance on getting somebody else who is a darn sight worse, I just did the sly act and figured maybe he will rectify it.

Q. Maybe he will what?

A. Maybe he will cut it out.

Q. Well, did he? A. No.

Q. Now, Mr. Tranberg, there was some mention about your log. What do you put in your log ordinarily?

A. Oh, weather conditions, barometric pressure, temperature, [1637] courses the ship is being steered, discharge of cargo, entering or leaving port.

Q. Do you put in there when a man is found under the influence of liquor? A. No, sir.

Q. Are you required to do that? A. No, sir.

(Testimony of Carl C. Tranberg.)

Q. Now I believe in answering Mr. Martin's questions you said that although Mr. Rosen had neglected his duties or rather had failed to be where he should be about two times, at the end of the Spanish trip you didn't discharge him. Why was that?

A. For the same reason. I wanted to give the man a chance. I didn't want to discharge him. You know, give him a chance to better himself.

Q. Did he better himself? A. No.

Mr. Van Dusen: That is all.

Recross Examination

Q. (By Mr. Martin) Mr. Tranberg, are you familiar with the laws governing marine inspection of the United States Department of Commerce, Bureau of Marine Inspection and Navigation dated April 1, 1938?

Mr. Williams: Now, your Honor, we object to that.

Trial Examiner Myers: Overruled. [1638]

A. To a certain extent.

Q. (By Mr. Martin) Are you familiar with the provisions in that manual concerning log book?

A. Yes, to a certain extent.

Q. Are you familiar with the paragraph in that manual which reads as follows: ". . . a statement of the conduct, character, and qualifications of each of his crew or a statement that he declines to give an opinion of such particulars"? That refers to

(Testimony of Carl C. Tranberg.)

what shall be put in a log book on a foreign or intercoastal trip. Are you familiar with that section?

A. What log book are you referring to?

Q. I am referring to the official log book.

A. I have nothing to do with the official log book.

Trial Examiner Myers: Now, Mr. Tranberg, in order to become a captain of a boat do you have to take an examination? A. Yes, sir.

Trial Examiner Myers: A written examination?

A. Yes, sir.

Trial Examiner Myers: Did you ever take that examination? A. Yes, sir.

Trial Examiner Myers: Did you study for it?

A. Yes, sir.

Trial Examiner Myers: Do you know what is supposed to go in the log? [1639]

A. Yes.

Trial Examiner Myers: Will you tell the gentleman all you know with reference to what should go in the log? A. In the official log?

Trial Examiner Myers: In the official log. Tell him.

A. Such as a member of the crew getting sick or dying; if somebody gets hurt aboard the ship, injuries and so forth, you know; and if the weather conditions is very bad and you have a damage of cargo; and in the same thing you also have the slop chest recorded in it and the drawing of money at

(Testimony of Carl C. Tranberg.)

the different ports, you know; and also if a man becomes too unruly and commits murder or intent to murder aboard the ship; fighting and several other things that I can't think of right now.

Q. (By Mr. Martin) Mr. Tranberg, are you familiar with that section in the manual that I have mentioned to you which provides that there shall be entered in the official log book on a foreign trip or an intercoastal trip ". . . every offense committed by any member of his crew for which it is intended to prosecute or to enforce a forfeiture, together with such statement concerning the reading over of such entry and concerning the reply, if any, made to the charge, as is required by the provisions of Section 4597"? Are you familiar with that section? A. Yes. [1640]

Q. In view of that section, if Mr. Buckless was to be required to forfeit his job for any offense committed on that trip to Spain, would it not be so recorded in the log book?

Mr. Williams: Mr. Examiner, that section has nothing whatsoever to do with dismissal of a seaman. It is with regard to forfeiture of his pay, his bonus. That is what it refers to.

Trial Examiner Myers: I think you are asking the wrong witness the question.

Mr. Williams: I object to the question.

Trial Examiner Myers: This witness says he has never had anything to do with the log book. I will sustain the objection.

(Testimony of Carl C. Tranberg.)

Q. (By Mr. Martin) Mr. Tranberg, do you sign the log book as a witness?

A. The official log?

Q. Yes. A. I do, yes.

Mr. Martin: That is all. [1641]

Redirect Examination

Q. (By Mr. Van Dusen) When do you sign the log? A. The official log?

Q. The official log.

A. At the end of a trip. The captain usually has me sign if I owe anything, if I made any drawings, and he might request me to witness the other signatures, you see.

Q. At the end of a trip?

A. Yes, but in this case I think the third mate has been doing that job instead of me.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Wait a minute. Will you tell me again what the duties are of a quartermaster in port and at sea.

A. At sea his duty is to steer the ship at the designated course and in port his duties are to stand watch; merely to stand watch in port while the ship is discharging or loading.

Trial Examiner Myers: That is a pretty important position, isn't it?

A. Quartermaster? Yes. Well, it is in a way.

Trial Examiner Myers: A responsible position?

A. Yes.

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: Now were you ever present when Buckless presented any grievances to the captain of the boat? [1642]

A. I never heard Buckless make any complaints or any grievances aboard the steamship "Nevada."

Trial Examiner Myers: I mean on behalf of the crew.

A. I never heard him on behalf of the crew.

Trial Examiner Myers: Did he make any to you on behalf of the crew?

A. Not to my knowledge.

Trial Examiner Myers: Did you ever hear Rosen make any complaints or submit any grievances on behalf of the crew to the captain?

A. Not to my knowledge.

Trial Examiner Myers: Did you hear Rosen ask the captain about shore leave? A. Never.

Trial Examiner Myers: On arriving in Spain?

A. Never.

Trial Examiner Myers: Now there were some grievances on that trip to Spain; especially on the way back, weren't there?

A. I didn't hear any complaints.

Trial Examiner Myers: Well, about the fifty dollar bonus that they were to get?

A. Well there was no grievances on that trip about that. That was the trip before that, I think.

Trial Examiner Myers: I mean for going into the war [1643] zone. Weren't the crew to get fifty dollars for the trip or fifty dollars for each port?

(Testimony of Carl C. Tranberg.)

A. We were to get fifty dollars for the trip extra.

Trial Examiner Myers: And didn't somebody present some grievances on behalf of the crew asking for fifty dollars per port?

A. I don't know anything about it.

Trial Examiner Myers: Were you present when those grievances were presented to the captain?

A. I never heard the grievances.

Trial Examiner Myers: You heard some talk about it? A. No, sir.

Trial Examiner Myers: That they wanted fifty dollars a port?

A. No, I never heard anything on it.

Trial Examiner Myers: Do you know how many times Rosen signed the articles? About.

A. About four times.

Trial Examiner Myers: And how many times did Buckless sign the articles?

A. Let's see? He was there a little longer than Rosen and I might say six times. Anyway something like that; five or six or seven times.

Trial Examiner Myers: Do you know how many members of the crew were union members? [1644]

A. I didn't know there was any.

Trial Examiner Myers: You didn't know there was any? A. No, sir.

Trial Examiner Myers: Did they have a vote sometime this year under the National Labor Relations Act? A. A vote?

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: Yes, requesting certification. Wasn't there a vote taken on your boat?

A. Oh, yes. I forgot about that.

Trial Examiner Myers: Do you remember that?

A. Yes.

Trial Examiner Myers: When was that taken?

A. I have forgotten that date too.

Trial Examiner Myers: What?

A. I don't remember that date.

Trial Examiner Myers: I mean was it before the Spanish trip or after the Spanish trip.

A. Well, I think it was before. I think. I am not sure whether it was before or after.

Trial Examiner Myers: Do you think it was taken some time in December, 1937 or January, 1938?

A. It might have been. You see, half the month of December I was off.

Trial Examiner Myers: Yes, you were off from December 17th until some time in the early part of January? [1645]

A. Yes, sir.

Trial Examiner Myers: But you were on board when they took the vote, weren't you?

A. Yes, I was on board when it happened.

Trial Examiner Myers: That was before the Spanish trip, you think?

A. I believe so.

Trial Examiner Myers: And you didn't hear anybody talking unionism at that time?

A. None at all.

Trial Examiner Myers: None whatsoever?

(Testimony of Carl C. Tranberg.)

A. Not to me.

Trial Examiner Myers: Did you hear them talking among themselves about unions and unionism?

A. No, sir.

Trial Examiner Myers: That is all.

Recross Examination

Q. (By Mr. Martin) Mr. Tranberg, on the occasion when Mr. Rosen was fired, when did the boat arrive at Port Arthur? In the night or in the morning?

A. I think we arrived that forenoon on the, if I remember right, 17th or 18th.

Q. Now that first day that you arrived, was that the day that Mr. Buckless informed you that he had been fired? A. Yes, sir. [1646]

Q. Did you fire Mr. Rosen that same day?

A. No, sir.

Q. You waited until the next day to fire Mr. Rosen? A. The day after.

Q. Were there any special duties you wanted Mr. Rosen to perform that afternoon or evening or the next morning? A. Not necessarily.

Q. Why did you keep him there that extra day?

A. I intended to keep him another trip if he hadn't kept up his loafing.

Q. Oh, did he loaf that afternoon on shore?

A. On shore?

Q. While the boat was at Port Arthur, did he loaf? A. That forenoon.

(Testimony of Carl C. Tranberg.)

Trial Examiner Myers: That is, the day he was fired?
A. Yes, sir.

Trial Examiner Myers: The 19th?

A. Yes, sir. [1647]

Q. (By Mr. Martin) You mean the day he was fired?
A. Yes, sir.

Q. Did his loafing that day distress you any more than his loafing on other days had?

A. Well, I decided then that he wasn't going to do any better and I might as well go ahead and get another man in his place, because he wasn't going to better himself at all.

Q. Did you decide quickly?

A. Well, I thought of it some time, because I was saying to myself, "Let him go along. Maybe he will change."

Q. Did you decide all of a sudden that morning that he was not going to change?

A. Right on that moment. I said, "Well, that is enough now. I am just going to make the change."

Mr. Martin: That is all.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Thank you. You are excused.

(Witness excused.) [1648]

HUGO SWANSON,

a witness called by and on behalf of the respondent,
being first duly sworn, was examined and testified
as follows:

(Testimony of Hugo Swanson.)

Direct Examination

Trial Examiner Myers: Will you please give your name and address to the reporter?

A. Hugo Swanson, 4310 North Maynard, Chicago, Illinois.

Q. (By Mr. Van Dusen) Captain Swanson, are you employed by The Texas Company?

A. I am.

Q. What ship? A. "Nevada".

Q. Are you captain of that ship?

A. Yes, sir.

Q. How long have you been captain of that ship? A. Seven years.

Q. Seven years? A. Yes, sir.

Q. How long have you been on the sea, Captain?

A. About thirty-seven years.

Q. How long have you been a captain?

A. About nine years, I guess.

Q. How much?

A. About nine years, I guess; eight or nine.

Q. Did you start as ordinary seaman, Captain?

[1649]

A. I did.

Q. Did you later become an able-bodied seaman?

A. I have been everything in The Texas Company but ordinary seaman.

Q. You have? A. Yes, sir.

Q. You have held every job on a ship but ordinary seaman? A. Yes, sir.

(Testimony of Hugo Swanson.)

Q. Were you ordinary seaman on any other boat other than Texas Company?

A. I have been ordinary seaman over in Sweden. I was ordinary seaman on their ships.

Q. On Swedish ships? A. Yes, sir.

Q. Now as captain of the "Nevada" are you in full charge of that ship? A. I am.

Q. Are you responsible for that ship?

A. I am.

Q. How many mates do you have, Captain Swanson? A. Three mates.

Q. Three mates? A. Yes, sir.

Q. Are they your chief assistants on the ship?

A. They are. [1650]

Q. Captain Swanson, do you know Mr. Buckless? A. I do.

Q. Do you recall about when he joined the "Nevada"? A. Latter part of 1937.

Q. Latter part of 1937? A. Yes, sir.

Q. And do you recall when he left the "Nevada"? A. Some time in April.

Q. In April? A. Yes, sir.

Q. Do you know Mr. Rosen?

A. Yes, sir, I do.

Q. Do you recall when he joined the "Nevada"?

A. The beginning of 1938.

Q. Was that after Mr. Buckless joined the ship?

A. It was, yes, sir.

Q. Do you recall when Mr. Rosen left the "Nevada", about when?

(Testimony of Hugo Swanson.)

A. Yes, I remember the time.

Q. What time?

A. About April, in April some time.

Q. Was it the same time Mr. Buckless left?

A. Shortly after.

Trial Examiner Myers: The testimony shows that it was the following day. Is that right? [1651]

A. Yes, I think so.

Q. (By Mr. Van Dusen) Captain Swanson, did you dismiss Mr. Buckless? A. I did.

Q. What did you tell him when you dismissed him?

A. I told him that he was finished on account of his drunkenness and bringing liquor on board the ship.

Trial Examiner Myers: What was your answer? I didn't get that last. Read it over.

(The answer was read by the reporter.)

Q. (By Mr. Van Dusen) Was any one present when you told him that?

A. Second officer.

Q. What is his name? A. Hopper.

Q. Was any one else present that you know of besides Mr. Buckless?

A. There were some of the crew in the alleyway, but I don't recall any of them.

Q. You don't recall them? A. No, sir.

Q. Now, Captain, in your own words tell us the circumstances leading up to the dismissal by you of Buckless. Just what happened?

(Testimony of Hugo Swanson.)

A. Well, when I made up my mind to fire Buckless, that was [1652] the time I caught him on the dock with a case of beer on his shoulder.

Q. Where was that? A. In Port Arthur.

Q. About when was that?

A. It was abreast of case oil dock.

Q. About what time was that, Captain Swanson, approximately?

A. I think it was in the forenoon some time, but I cannot remember the date.

Q. Do you know about what month it was, Captain?

A. It was about a week before he was discharged.

Q. Now didn't you meet him on the dock?

A. I met him myself.

Q. Tell us what you saw, and what you said.

A. I told him not to bring that liquor on board the ship.

Q. Did he have liquor with him?

A. He had a case of beer.

Q. Did you see it? A. I saw it.

Q. Was he carrying it?

A. He had it right on his shoulder.

Q. What did he say?

A. He said it belonged to an officer.

Q. Belonged to who?

A. To an officer on board the ship. [1653]

Q. Did it belong to you?

(Testimony of Hugo Swanson.)

A. No, it didn't. And I told him it didn't matter whether officer or seaman, he was not allowed to bring it aboard the ship.

Q. What did you do then?

A. I made up my mind to discharge him as soon as the ship came back.

Q. Where did you go after you made that remark to Mr. Buckless?

A. I was busy at the time. I had to go to the custom house and get a small correction through enrollment.

Q. Where did Mr. Buckless go?

A. He went down to the ship.

Q. Do you know whether he took the case of liquor, case of beer, aboard?

A. I don't know whether he took it aboard or not, but he brought it down to the ship, I know.

Q. Now, Captain Swanson, I believe you testified that you dismissed Mr. Buckless for drunkenness and bringing beer aboard ship. Now before this beer incident did you observe Mr. Buckless' conduct on the ship?

A. A number of times.

Q. Describe that.

A. Especially one day on the bridge, I called Mr. Kelly's attention to the boatswain's behavior on the forecastle head. [1654] He was falling all over the forecastle head, and couldn't handle a line. In fact, these are the words I said to Mr. Kelly: "That is a fine boatswain to have on board a ship."

Q. What was his condition?

(Testimony of Hugo Swanson.)

A. Drunk, stumbling all over.

Trial Examiner Myers: When did he say this was?

Mr. Van Dusen: He didn't say.

Q. When was that, Captain Swanson, about when? A. I can't remember the date.

Q. About what month, do you know, just approximately?

A. Perhaps a month before he was paid off.

Q. How long before?

A. About a month before.

Q. About a month before? A. Yes, sir.

Q. Now, Captain Swanson, do you remember any other incidents?

A. Yes. I remember one day in Boston.

Q. What happened there?

A. The ship left in the afternoon. There was a fight back there.

Q. Yes.

A. So when the mate came on watch I asked him to go back and find out what it was.

Q. Yes. [1655]

A. And instead of going back he called Buckless up on the bridge, and about that time I saw Buckless, and he was not sober at that time.

Q. I see.

Trial Examiner Myers: This took place in Boston? A. It was in Boston.

Q. (By Mr. Van Dusen) Now when did that take place, Captain Swanson, about when?

(Testimony of Hugo Swanson.)

A. Between Christmas and New Year's, I think.

Q. Now do you remember any other incident, Captain? A. I saw him over in Spain drunk.

Q. On the Spanish trip? A. Yes, sir.

Q. What happened there?

A. He wanted to go aboard in the cargo——

Q. What port was that? A. In Bilbao.

Q. Tell us just what happened.

A. I stopped him from going aboard. We couldn't keep the gangway on the dock; couldn't keep the hose on the dock.

Q. What was his condition? A. Drunk.

Q. Do you remember any other incident, Captain?

A. Well, he was drunk a number of times. [1656]

Q. You saw him?

A. A number of times, when the ship was leaving the dock.

Q. Now, Captain, from the time Mr. Buckless got on the boat until he left tell us just what ports your ship went to, if you can recall all of them.

A. I think he joined in Galveston.

Q. What is that?

A. I think he joined in Galveston. From Galveston to Corpus Christi, and from Corpus Christi to Port Arthur; and from Port Arthur back to Corpus Christi, and then back to Port Arthur, to Port Neches, whichever it was. It is about the same port, anyhow.

(Testimony of Hugo Swanson.)

Q. Did you go to Spain? A. To Spain.

Q. What ports did you hit?

A. Corona, Bilbao, Pasjes.

Q. About when was the Spanish trip over, Captain?

A. 1938. I remember the day we came back, but I don't remember when we started over there.

Q. Do you know about when you left on the Spanish trip?

A. It must have been in the middle of January.

Q. How long does it take ordinarily to go to those three ports and come back to Port Arthur?

A. At that time we had a long trip; four days in Bilbao, and I should say three or four days in Pasjes, three days at [1657] least.

Q. Would you say over a month?

A. Oh, yes.

Q. Two months? A. Not quite.

Q. Not quite two months?

A. About 45 days, I guess.

Q. Now, Captain Swanson, after you got back to Port Arthur from the Spanish trip did you go coastwise? A. We did.

Q. What ports did you touch on those coastwise trips? A. Claymont.

Q. Claymont.

A. Aynessville, Port Texaco.

Trial Examiner Myers: You mean while Buckless was on board?

Mr. Van Dusen: Yes, this was while Buckless

(Testimony of Hugo Swanson.)

was on board.

A. I think we went back to Corpus Christi one trip. I am not sure of that.

Q. Any other ports along the Atlantic Seaboard?

A. New Haven.

Q. Yes.

A. And I think we were in Providence too. I am not sure.

Q. How about Boston? [1658]

A. That was before we went to Spain.

Q. Before? A. Yes, sir.

Q. Now did you see Buckless drunk at any of those ports?

A. In Boston I did. In Bilbao, I did. I had a complaint from the chief officer about him.

Q. Who is that, Mr. Tranberg?

A. Mr. Tranberg.

Q. How many times did he complain to you about him?

A. Quite a few times; I can't remember; at New Haven; I don't remember. Sometimes I go ashore and stay off, and I am not near the ship for a day or so.

Q. Now do you keep the official log, Captain Swanson? A. I do.

Q. Is it your practice to put incidents like this in your official log?

A. Not unless the man is lost.

Q. When do you log a man?

A. Well, we have got the privilege to do it in

(Testimony of Hugo Swanson.)

a case like this, but we don't do it.

Q. When do you log a man, Captain Swanson?

A. I never did.

Q. You never did? A. No, sir.

Q. What do you put in your log book, Captain Swanson? [1659]

A. Well, the draft of the ship, freeboard, and the amount of money each man draws, and everybody's name that signs the articles; and, as I say, any logging, if a man is logged; any kind of accident. If a man is put ashore for any accident, if he had an accident aboard there, that has to go in the log; any collision. There are a number of things. I can't think of them all right now.

Q. Now, Captain Swanson, when Buckless came aboard the ship in November did you ask him whether he was a member of any union?

A. I did not.

Q. Did he tell you that he was a member of a union?

A. He told me when he got his discharge.

Q. Told you when he got his discharge?

A. His discharge or half day's pay, I can't remember which it was.

Q. Was that the first time he told you that?

A. That was the very first time I knew anything about it.

Q. What?

A. That was when he was discharged, when he left the ship.

(Testimony of Hugo Swanson.)

Q. Is it your practice to ask men whether they are members of the union?

A. No, I never ask a man aboard the ship.

Q. Did you dismiss Buckless because he was a member of the union? [1660]

A. I did not.

Q. Now, Captain Swanson, you remember Mr. Rosen?

A. I do.

Q. Did you dismiss Mr. Rosen?

A. No. The chief mate did.

Q. The chief mate?

A. Yes, sir.

Q. During the time Mr. Rosen was on board, Captain Swanson, did you see him around the ship?

A. I saw him on board a number of times.

Q. You saw his conduct and behavior, did you?

A. I did.

Q. Tell us about that.

A. Well, he seemed to have less interest in his work than any of the rest of the crew. Especially one day I noticed it. I was walking up and down the deck amidships, and Rosen and an ordinary seaman along were washing paint.

Q. Did that happen more than once? What else?

A. At that time I saw Rosen he didn't do but very little more than half of what the other man did.

Q. About when was that, do you know?

A. I can't recall the date.

Q. Do you remember any other incident, Captain Swanson?

A. Well, I never wrote anything down, so I

(Testimony of Hugo Swanson.)

can't remember the dates, but I know that he was purely lazy, that is all. [1661]

Q. Now did the chief mate have anything to say to you about Rosen?

A. He did. He complained.

Q. What?

A. He complained about his work many times; and also complained about him not standing watch properly.

Q. Now, Captain Swanson, when Mr. Rosen came aboard the ship did you ask him whether he was a member of a union?

A. No.

Q. Did he ever tell you?

A. No, Rosen never told me.

Q. Now, Captain Swanson, did Mr. Rosen or Mr. Buckless ever come to you about any complaints or grievances on the ship?

A. I remember one case the whole crew was up, but I don't remember if Rosen or Buckless were there particularly.

Q. You don't remember them?

A. I guess they were in it. I called the whole crew up.

Q. You did?

A. Yes, sir.

Q. Tell us about that.

A. We were loading over at Cat Island, and the ship was seven miles off shore. [1662]

Q. Yes.

A. So the mate told me there was a dispute about overtime.

(Testimony of Hugo Swanson.)

Q. Yes.

A. So I asked them what the trouble was about it: "Do you want overtime for standing watches; want overtime for loading the ship?" So I said I didn't think they were entitled to overtime, standing watches. The ship was at sea. I told him to send the men up there, that I wanted to see them.

Q. Who came up?

A. The biggest part of them at least came up.

Q. Was this the deck department?

A. All departments.

Q. And they all came up? A. Yes, sir.

Q. And then what was said, Captain Swanson?

A. I asked them what the trouble was. And I don't remember who spoke up, but one of the men spoke up and said: "We want overtime."

So I said: "You will get overtime for handling cargo and handling barges, anything in the line of handling cargo."

But I didn't think they were entitled to overtime for standing regular watches, because the ship was at sea.

Q. Yes. [1663]

A. Well, one man spoke up and said they had a place like that out on the West Coast, and they were paying overtime. And I told them: "Perhaps it is inside of the three mile limit, and perhaps the ship is not at sea like we are now. Of course, they didn't answer that. And I told them: "I will take it up with The Texas Company and see if they are

(Testimony of Hugo Swanson.)

willing to pay it, and if they want to pay it, I will pay it."

So I took it up with Mr. Bucklin. I saw him first.

Q. Bucklin? A. Bucklin.

Q. You don't mean Buckless?

A. No, Bucklin. And he took it up with Mr. Hand; and when I came up to Port Neches there was orders for me to pay the overtime.

Q. Did you have any authority to pay that overtime?

A. I had no authority to do it before I was told to do it by the office.

Q. Now, Captain Swanson, did Mr. Buckless or Mr. Rosen speak to you at that time while the members of the crew were there?

A. I couldn't say about them.

Q. You don't know who spoke for the crew?

A. No. They all spoke; quite a few of them, anyhow.

Q. A few of them? [1664]

A. A few of them. I remember I had one man in there and showed him the distance off shore, showed him on the chart.

Q. Did they get that overtime later?

A. They did get it.

Q. Now, Captain Swanson, do you remember any other time during the time either Mr. Rosen or Mr. Buckless were on the ship that any members of the crew had a little dispute and came to you?

A. No, I can't recall any.

(Testimony of Hugo Swanson.)

Q. You don't remember any time?

A. No, sir.

Q. Is it possible that they may have come to you?

A. I should remember it if they did.

Q. Do you always talk to these men when they have complaints? A. I do.

Q. Do you always listen to their complaints, Captain Swanson? A. Yes.

Q. Do you try to straighten out the matter?

A. That is correct.

Mr. Wright: Mr. Examiner, that is a leading question. It has gone pretty far now?

Trial Examiner Myers: Objection overruled.

Q. (By Mr. Van Dusen) Now, Captain Swanson, as long as you [1665] have been captain on various ships, has it been the practice for seamen to come to you when they had trouble or dispute?

A. It has.

Q. Have you or have you not always listened to them? A. Always listened to them.

Q. Captain Swanson, do you know whether any meetings of the crew were held on board ship?

A. I do not; I don't know.

Q. You don't know? A. No, sir.

Q. Captain Swanson, did Mr. Tranberg tell you that he intended to dismiss Mr. Rosen?

A. He did.

Q. Did you approve? A. I did approve.

Q. Captain Swanson, when the ship was at Bil-

(Testimony of Hugo Swanson.)

bao, Spain, was there some discussion about shore leave?

A. There was. We had to get permission from the Government to go ashore?

Q. Why?

A. On account of the country being at war.

Q. How was that?

A. The country was at war.

Q. Captain Swanson, did either Mr. Buckless or Mr. Rosen come up to see you about shore leave?

[1666]

A. There was a man up there, but I couldn't remember who it was.

Q. You don't remember whether it was Mr. Rosen or Mr. Buckless? A. No.

Q. Did he say that he was representing the crew? A. No.

Q. Was he speaking for himself?

A. I guess he spoke for all of them. That is customary to come up and ask if they can go ashore.

Q. And what did you say to him?

A. I told him he would have to wait until I got permission from the Government.

Q. Did you then try to get permission from the Government?

A. The agent had already started before we came alongside of the dock.

Q. Before this man spoke to you? A. Yes.

Q. How long were you in port before the men got to go ashore?

(Testimony of Hugo Swanson.)

A. If I am not mistaken, we docked at noon, and we had permission to go ashore some time that night, late in the afternoon or that night some time.

Q. And did the members of the crew then go ashore, Captain Swanson? [1667]

A. I think they did.

Q. Captain Swanson, on the date that you told Mr. Buckless he was dismissed, did he say to you: "Now, Captain, I am really fired for union activities, am I not?"

A. No, he didn't say those words.

Q. What did he say?

A. He says: "It is not on account of my drunkenness. I am fired on account of union activities."

Q. What did you say?

A. I told him that he was not; that I didn't know whether he belonged to a union, and I didn't care.

Q. Was that when you learned that he was a member of the Union?

A. That is the first time I knew anything about it.

Q. Now, Captain Swanson, did you ever warn Mr. Buckless about his drinking?

A. I don't do that.

Q. You don't what?

A. I don't warn them. The mate does that himself, the chief mate.

Q. The mate does?

A. Yes, sir.

(Testimony of Hugo Swanson.)

Q. If your men on board ship get drunk, do you give them a chance?

A. I will give them more than one. I will give them [1668] plenty of chances. [1669]

Q. Captain Swanson, do you dismiss a man if he is drunk once or twice? A. No.

Mr. Van Dusen: That is all.

Cross Examination

Q. (By Mr. Martin) Captain Swanson, what good is it for a man to have a certificate of discharge?

A. Well, on some ships they want to see how long a man has been a ship, how much experience he has at sea. But for my part, I never look at one.

Q. You don't? A. No.

Q. Are they something that is required by the Bureau of Marine Inspection and Navigation?

A. It is required to give them a discharge. Many of them walk off the ship without getting one.

Q. Is the seaman supposed to sign the certificate of discharge? A. Yes, sir.

Q. Is he supposed to sign it in the presence of the captain? A. He is.

Q. Why is that?

A. Otherwise, men could sign it.

Q. Otherwise, somebody else could sign it? [1670]

A. Yes.

Q. Well, what if he does?

(Testimony of Hugo Swanson.)

A. Well, it would be a false statement, wouldn't it?

Q. Would it? A. I should think so.

Q. Is that so? A. Yes, sir.

Q. Well, have you ever read what is on the back of a certificate of discharge?

A. No, I don't remember. I have read it some time I guess, but I don't remember what it says.

Q. To refresh your recollection, did you ever read this statement from the back of a certificate of discharge: "Whoever receives or has in his possession, with intent to unlawfully use, or uses or exhibits a certificate to which he is not lawfully entitled, or alters, changes, counterfeits, forges or steals such certificate, or unlawfully has in his possession any blank form thereof, or aids or abets the perpetration of any of the above, shall be liable to a fine of not more than \$5,000.00 or imprisonment for not more than five years, or both."

A. I remember reading it.

Q. Captain Swanson, if a certificate of discharge were not signed in your presence, in the presence of the captain or of the Commissioner, and then a man later signed, not in their [1671] presence, would he thereby alter that document, do you think?

Mr. Williams: Mr. Examiner, we object. That is a question of law that the court would have to pass on.

Trial Examiner Myers: Read the question.

(Testimony of Hugo Swanson.)

(The question was read by the reporter.)

Mr. Williams: We submit that is calling for a legal conclusion.

Trial Examiner Myers: I sustain the objection.

Mr. Martin: Mr. Examiner, before you rule, may I submit that whether or not it alters it in a legal sense has nothing to do with whether it alters it in the sense that it changes the document, and I am asking this witness, not to answer a legal conclusion, but I am asking him to answer the fact.

Mr. Williams: I further submit it touches no issue in this case.

Trial Examiner Myers: What is the purpose, to show that he is derelict in his duties?

Mr. Martin: I beg pardon.

Trial Examiner Myers: Is that the purpose?

Mr. Martin: Possibly that. Possibly also that it is not a proper discharge if a man doesn't sign it in the presence of the captain.

Trial Examiner Myers: I will overrule your objection for the time being. If he doesn't connect it up and it doesn't have anything to do with the case I will entertain your motion [1672] and strike it out.

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Captain Swanson, do you ever allow certificates of discharge for men who are leaving the boat to get out of your sight before the man signs in your presence? A. No.

Q. Have you ever? A. No, I don't think so.

(Testimony of Hugo Swanson.)

Q. Captain Swanson, at the conclusion of a foreign voyage, when a certificate of discharge is signed by the man, the seaman, is he expected to sign in your presence as well as in the presence of the Commissioner?

A. It is not necessary to sign in my presence as long as he signs in the presence of the Commissioner.

Q. Captain Swanson, how long has this been the ruling, that you have been telling us about?

A. I don't remember exactly; over a year, I guess.

Q. Over a year? A. Yes, sir.

Mr. Martin: Now, Mr. Examiner, I should like the record to note at this time that every question and every answer I have just asked Captain Swanson will be connected up with testimony that will later come into this case in connection with another vessel, although it has no application upon the "Nevada". [1673]

Mr. Williams: The respondent renews its objections, and asks that the question and answer be stricken in regard to failure of discharge, if any, to be signed in the presence of the master.

Mr. Van Dusen: And also on the ground that it is irrelevant in this particular case.

Trial Examiner Myers: I will reserve a decision.

Mr. Pipkin: And one final ground——

Trial Examiner Myers: Be sure you three gentlemen are all objecting concurrently.

Mr. Pipkin: May I state this objection.

(Testimony of Hugo Swanson.)

Trial Examiner Myers: Yes, sir.

Mr. Pipkin: Subsection E of Section 643 of Title 46 of the United States Code, Annotated, in describing a certificate of discharge and its requisite makes no requisite for the signing either in the presence of the master, before or thereafter, of the seamen.

Trial Examiner Myers: Well, here is the wording of the certificate. It says: I hereby certify that the above entries are made by me and are correct, and that the signatures hereto are witnessed by me, dated this blank day of blank. Proceed will you.

Mr. Williams: I just want to add there——

Trial Examiner Myers: That is a question of law you can brief later. [1674]

Mr. Williams: There is nothing in the testimony here that any certificate connected with the “Nevada” was signed by the seamen out of the presence of the master.

Trial Examiner Myers: He said he would connect it up with another boat; and they qualified the captain as an expert at the beginning of this hearing. [1675]

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Captain Swanson, did you ever see a union meeting in progress on the “Nevada”? A. I did not.

Q. Did you ever see any meeting whatsoever in progress on the “Nevada”?

A. No, unless you refer to that one when the

(Testimony of Hugo Swanson.)

whole crew was upon the bridge, and that was not a regular meeting.

Q. Captain Swanson, do you remember the last trip that Mr. Rosen was aboard the "Nevada"?

A. Yes, I remember the last trip, but I don't remember the date.

Q. Do you remember where the boat went and came to and from?

A. No, I can't remember. I know she was——
Trial Examiner Myers: Mr. Rosen was discharged or fired, or whatever you want to call it, April 19, 1938. Will that help you?

A. Yes, that will help me, yes. She was at Port Neches at the time.

Q. (By Mr. Martin) Where had she been?

A. A short trip; perhaps to Port Texaco, or Corpus Christi, or Amesville.

Q. Where had she started that trip?

Trial Examiner Myers: Have you anything to help the captain on it? [1676]

Mr. Van Dusen: The shipping articles there.

A. I can't remember where she came from. I remember it was a short trip, only five or six days' trip, but I can't remember where.

Q. (By Mr. Martin) Did it start at Port Arthur?

A. Undoubtedly it did, Port Arthur or Port Neches.

Q. Do you believe that is the trip the boat went

(Testimony of Hugo Swanson.)

from Port Arthur to Cat Island, and to Port Arthur?

A. I believe so; either to Cat Island, Corpus Christi or Amesville. Those are three ports we can make in that time.

Q. Do you know about what time of day the boat left Port Arthur?

A. I think it was in the afternoon, because I was up at the custom house in the forenoon. It must have been in the afternoon.

Q. What time in the afternoon?

A. I can't remember.

Q. Early afternoon or late afternoon?

A. I can't answer that question.

Q. What time of day did you decide to fire Mr. Buckless?

A. When I met him on dock with the case of beer on his shoulder.

Q. About noon? A. In the forenoon.

Q. And the boat didn't sail until some time in the afternoon? [1677]

A. Some time in the afternoon.

Q. Why did you take Buckless on that trip?

A. I had to go to the customs house. I was not back to the ship before she was ready to sail.

Q. How about Mr. Meyer, would he have helped you get a new boatswain?

A. He can't pay off the crew. I have got to do that myself.

Q. Well, would it have taken very long that day

(Testimony of Hugo Swanson.)

for you to figure out how much was due Buckless and pay him off that day, just Buckless alone?

A. It would not have taken so long to pay him off, but we would have lost so much time in getting a new man. We have to get a new man to replace him.

Q. If you decided right there when you saw Buckless with the beer, couldn't you have phoned Mr. Meyer in two minutes?

A. Yes, but I couldn't be down myself on account of the custom house work.

Q. How long were you at the custom house?

A. Well, I don't remember. It takes quite a little while to go up?

Q. Several hours? A. Oh, no.

Q. Just a few minutes?

A. I had my dinner when I was ashore; at dinner time. I [1678] didn't come right back.

Q. But you say you decided to fire him when you saw him with the beer? A. I did.

Q. But you did take him the next trip with you, nevertheless? A. I did so.

Trial Examiner Myers: Was he drunk on that last trip?

A. He had no chance. I think it was to Cat Island. I am almost sure it was.

Q. (By Mr. Martin) You say he was not drunk on that trip?

A. I think it was to Cat Island, and he couldn't get it, because the ship was seven miles off shore.

(Testimony of Hugo Swanson.)

Q. How about the beer you saw him with?

A. I don't know.

Q. He couldn't have gotten drunk on that?

A. He could.

Q. He didn't.

A. I couldn't answer that, because I was not aboard the ship before it was ready to sail.

Q. Was he drunk when she was ready to sail that day? A. I can't remember.

Q. Did I understand you correctly to say that you saw him take the beer up to the boat, but you didn't see him take it on the boat? [1679]

A. That is correct.

Q. Where did you pass him when he had this beer on his shoulder? A. At the case oil dock.

Q. Where?

A. At the case oil dock, Texas Company plant.

Q. Case oil dock? A. Yes, sir.

Q. How far is that from the gang plank of the "Nevada", was it at that time?

A. About two ship lengths, or three maybe.

Q. Were you going out or coming in?

A. I was going out.

Q. Was he coming in? A. He was coming in.

Q. Now after he passed you before he got to the boat he had to walk two ship lengths, did he?

A. Yes.

Q. Did you turn around and watch him walk those two ship lengths?

A. I did. I walked out to the end of the dock

(Testimony of Hugo Swanson.)
and watched him. It was in the warehouse I met him, and I walked out to the end of the dock and watched him.

Q. Tell us what you saw.

A. I saw him go right down to the ship with a case of beer [1680] on his shoulder, he and one more.

Q. Then what did you see?

A. After I saw him bring that down I walked up to the customs house.

Q. How long did you stand there watching him?

A. Not more than three or four minutes, I guess.

Q. You stood and watched until he got clear to the boat?

A. Until he came down to the boat.

Q. And then didn't you watch him any more?

A. No.

Q. Weren't you curious to see whether he took it aboard?

A. I couldn't see it.

Q. You mean around the corner or something?

A. Well, there is all the lifting gear and all the hose and the conveyors at the case oil dock.

Trial Examiner Myers: You just took it for granted that he took it on?

A. I did.

Q. (By Mr. Martin) Did you ever learn afterward whether in fact it was taken on the boat?

A. No, I did not.

Q. Did you ask him?

A. No. I forgot all about it. I had other work to be done uptown.

(Testimony of Hugo Swanson.)

Q. But then at the end of the trip you remembered it again, [1681] did you?

A. Oh, yes. My mind was made up when I saw him.

Q. Did it ever occur to you that perhaps you should find out whether he brought the beer aboard before you fired him for it?

A. I dismissed the case. I had my work to do uptown, so I couldn't think of it when I came down.

Q. Do captains customarily discharge men without looking into all the facts in the case?

A. Oh, no.

Q. You have the right to, haven't you?

A. I have got the right to do it.

Q. Haven't you always had the right to fire a man, the captain of a boat? A. Correct.

Q. An honored right and rule of the sea?

A. That is correct.

Q. For anything you want to?

A. Not for anything, I guess.

Q. Can't you fire him for anything?

A. Oh, no.

Q. What can't you fire him for?

A. I can't fire him for taking a drink.

Q. Is that a customary thing on the sea?

A. No, it is not customary.

Q. Lots of drinking on the sea? [1682]

A. No. Well, with most of the sailors it is. You have got to have something to fire them for.

Q. You mean a good excuse? A. Yes.

(Testimony of Hugo Swanson.)

Q. Sort of be on the lookout for it?

A. I didn't have to look out for it in this case. It was all plain.

Q. Now you said that Mr. Buckless told you that the beer belonged to an officer. A. He did.

Q. And he was taking it for an officer?

A. Yes, sir.

Q. Did you ever inquire of the officers whether they asked Mr. Buckless to bring any beer aboard for them? A. I did not.

Q. You did? A. No.

Q. You never did? A. No, sir.

Q. Didn't you want to know the facts?

A. Oh, I forgot all about it when I came down from the custom house.

Q. But you did think of it during those intervening days?

A. I had more time then to think things over.

Q. During the time when you had time to think things over [1683] did you then ask the officers if any of them had asked Mr. Buckless to bring any beer for them? A. No.

Q. Never did? A. No.

Q. Didn't you want to know the facts?

A. I would like to know, but I simply forgot it.

Q. Just made up your mind, I don't care about the facts, is that right?

A. Oh, I cared about the facts all right, but it slipped my mind, I guess. [1684]

Q. Captain Swanson, do you know that Mr.

(Testimony of Hugo Swanson.)

Buckless has three children? A. He told me so.

Mr. Williams: Just a minute. I submit, your Honor, that that has nothing to do with the case. It hasn't anything to do with this case as to what any person's in this case family was. It might be prejudicial, but it has no relevancy to this case whatsoever.

Mr. Wright: Mr. Examiner, we want to show that this man, without any investigation of any kind into the merits of the reason why he fired Mr. Buckless and without any consideration of Mr. Buckless' and his economic situation, up and fired him.

Mr. Van Dusen: That is not the evidence.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Martin) Captain Swanson, will you tell us again about that incident in Boston?

A. As a matter of fact, there was trouble aboard the ship in the afternoon and at 4:00 o'clock the mate comes on watch. So he found out where the trouble was back aft. So he sent for Mr. Buckless.

Q. Is that Mate Tranberg?

A. No, Tranberg was off at that time.

Trial Examiner Myers: You mean off duty?

A. No, he was on vacation. It was a man by the name of [1685] Olson who was mate and when Buckless came up at that time I could plainly see that he had been drinking quite heavily and he was still under the influence of liquor at the time.

Q. (By Mr. Martin) What time of day was

(Testimony of Hugo Swanson.)

this? A. 4:00 o'clock in the afternoon.

Q. Captain Swanson, did you talk with Mr. Buckless on that occasion? A. No, I didn't.

Q. You didn't?

A. I was right alongside of him, though.

Q. You were what?

A. I was right alongside of him, but I didn't talk to him.

Q. Didn't you say a word to him?

A. No. The mate spoke to him. Mr. Olson spoke to him.

Q. How far were you from Mr. Buckless?

A. Oh, about twenty-five or thirty feet, maybe. He was at the after end of the bridge and I was up around the forward end—not the forward end, but halfway up to the forward end.

Q. Captain, what does "log a man" mean?

A. Take part of his wages away for being drunk or disorderly.

Q. You don't do that?

A. No, I would rather discharge a man than do that.

Q. Captain, do you keep liquor in your quarters?

A. I do. [1686]

Q. You do? A. Yes.

Q. Do you stock it in once in a while; bring it aboard sometimes? A. I bring some on board.

Q. You have somebody bring it aboard?

A. Sometimes yes. Whenever the ship is through, though.

(Testimony of Hugo Swanson.)

Q. Do you drink it aboard?

A. I take a drink occasionally.

Q. Do you take a drink occasionally while the vessel is at sea?

A. Yes, for instance, when I come along the Florida reefs and I have been up twenty hours.

Q. Along the Florida reefs you take a drink?

A. After I am through.

Q. That is a dangerous place, isn't it?

A. That is a dangerous place, yes, sir, and I have to be up twenty or twenty-four hours; sometimes more; and when I am through and we are in open water I take a drink.

Q. Is that the only place on the coast where you don't take a drink if you want it?

A. No, if I want one I take one once in a while.

Q. Do you ever pass out liquor for others to drink? A. I do not.

Trial Examiner Myers: He means do you ever offer any- [1687] body a drink?

A. Not to the crew.

Trial Examiner Myers: Do you ever offer anybody a drink? A. Not to the crew.

Trial Examiner Myers: Well, if somebody is working alongside you, say the quartermaster?

A. No, I don't. After the pilot has brought the ship in I offer him a drink; after the ship is docked, but not before.

Trial Examiner Myers: There is no one on that ship who gets a drink of your liquor?

(Testimony of Hugo Swanson.)

A. That is correct, except as I say a pilot or a visitor.

Trial Examiner Myers: That is while you are in port? A. Yes, sir.

Q. (By Mr. Martin) Do you ever confiscate other people's liquor? A. I do.

Q. Now after you have confiscated other people's liquor do you let them have it once in a while?

A. Well, it depends on circumstances.

Q. In some circumstances you do let them have it once in a while? A. I do.

Q. You do? A. Yes, if it was their own.

[1688]

Q. Now if a man was a habitual drunkard would you let him have some liquor of his own once in a while; liquor that you had confiscated?

A. If I thought it would do him any good, yes.

Q. It might help cure him?

A. It might help cure a man after he has had a heavy spree and he is shaky. I think he needs a drink then.

Q. Captain, can I ship on your vessel?

A. Yes.

Q. Now, Captain, do you remember on this trip to Spain when Mr. Buckless was along confiscating some liquor that came aboard? A. I do.

Q. You do? A. Yes.

Q. Am I correct that you thought that was Mr. Buckless' liquor?

A. I knew it was. He told me it was his.

(Testimony of Hugo Swanson.)

Q. He told you it was? A. Yes.

Q. When did he tell you?

A. The following day.

Trial Examiner Myers: Did you give him a drink after he told you it was his liquor?

A. No, not then. The following day I did. [1689]

Trial Examiner Myers: I mean after he told you it was his liquor did he ask you for a drink?

A. He asked me for a bottle.

Trial Examiner Myers: Do you think he was trying to kid you along that it was his liquor in order to get a drink? A. No, I don't think so.

Q. (By Mr. Martin) How many bottles were there?

A. I don't remember exactly. I think there was four; at least three, anyhow.

Q. Do you remember what was in them?

A. No, I don't.

Q. You didn't test them? A. No.

Trial Examiner Myers: Was it Scotch or rye or gin?

A. No, there was none of that kind. That was Spanish liquor.

Trial Examiner Myers: That was on the way back? A. No, this was in Bilbao.

Q. (By Mr. Martin) Do you ever take some liquor on for your own quarters in Bilbao or Spain?

A. I do.

Q. Do you ever get any of that bad apple cider?

A. No, I don't drink that stuff.

(Testimony of Hugo Swanson.)

Q. Is that good stuff or bad stuff?

A. I couldn't tell you. [1690]

Q. Did you ever taste it? A. No.

Q. Now did you let Mr. Buckless have all those bottles that you confiscated? A. No.

Q. You didn't? A. No.

Q. How many of them did you let him have?

A. I don't recall. There was one other man that was up one night and told me one of them bottles was his.

Q. What did you tell him?

A. He was shaky at the time and he was shivering all over, so I give him one.

Q. You gave this other man one? A. Yes.

Q. Do you remember saying anything to him about "This is Buckless' liquor. Send him up to get it"? A. No, I didn't say that.

Q. You didn't say that? A. No.

Q. What was this other man's name who came up? A. I couldn't tell you.

Q. Was it Webb?

A. He was a quartermaster. That is all I know.

Q. How many bottles do you remember giving Mr. Buckless? [1691]

A. I give him one at that time and he got one while we were in Pasjes.

Q. He did? A. Yes.

Q. Did he get more than one in Pasjes?

A. No, I don't remember.

Q. You don't remember?

(Testimony of Hugo Swanson.)

A. No, I don't remember.

Q. Did you ever learn whether or not Mr. Buckless missed a watch shortly after the boat left Pasjes?

A. Buckless was not on watch.

Q. Yes. I have been corrected on that before. Are you aware or not aware that he missed some time in the day time when he was supposed to have been working shortly after the boat left Pasjes?

A. Yes, I was told by the chief mate that he didn't work.

Q. Did you see Mr. Buckless that day?

A. I didn't.

Q. You didn't?

A. I was looking for him but I couldn't find him.

Q. Did you ever learn whether he was ill or drunk that day?

A. If he had been ill he would have been in his room.

Q. How about the ship's hospital?

A. Well, nobody don't go in the hospital unless I put them [1692] there. That is not their place, unless they are sent there where they have sickness where it is going to affect other people.

Q. Did you ever make any connection in your own mind between Mr. Buckless' being laid up that day and the liquor you had handed him?

A. I don't know if that had anything to do with it. It might have been the shore leave at the other place. He could have got it there.

(Testimony of Hugo Swanson.)

Q. Where was he ashore? A. In Bilbao.

Q. In Bilbao? A. Yes, sir.

Q. Did you see him come aboard the boat when he came back from shore leave at Bilbao?

A. I saw him one morning.

Q. How many times did he go ashore at Bilbao?

A. I don't know.

Q. More than once?

A. There is no use me answering because I don't know.

Q. You know it was once?

A. I know it was once.

Q. On that occasion did you see him come aboard?

A. I didn't see him come aboard. I saw him on the dock.

Q. Do you know how he came aboard? [1693]

A. I saw how he tried to come on board.

Q. Do you know how he actually accomplished the fact?

A. I know we had to get the agent to get us a boat. We couldn't put the gangway ashore. The ship was swinging back and forth, breaking chocks and we couldn't hold her to the dock. We were up all night the night before.

Q. The water was so rough you couldn't hold the ship to the dock? A. Yes, sir, that is it.

Q. And you had to get a small boat to bring them aboard? A. Yes, sir.

Q. And then from the small boat they had to

(Testimony of Hugo Swanson.)

come up the pilot ladder? A. I guess so.

Q. Did you see them come up the pilot ladder?

A. I didn't.

Trial Examiner Myers: We will take a short recess.

(A short recess.)

Q. (By Mr. Martin) Where were you standing when the men came up the pilot ladder?

A. I don't know to tell you the truth. I don't know if I was around there.

Q. Well, now, which side of the ship was the pilot ladder on?

A. The starboard side. [1694]

Q. About midships?

A. About midships, yes, sir.

Q. Now right at that point on the boat isn't there some sort of an iron ladder that goes up to a higher deck? A. Yes, sir, close by.

Q. How far were you from the top of that ladder or whatever it is called?

A. I don't remember.

Q. Do you remember Roger Kelly coming up that iron ladder that morning? A. No.

Trial Examiner Myers: You mean the third mate?

Mr. Martin: The third mate, yes.

Q. (By Mr. Martin) Do you remember a conversation that you had with Roger Kelly that morning when you told him to go to his bunk because he was drunk?

(Testimony of Hugo Swanson.)

A. I do not. If I had to do a thing like that, then he would be finished. That would be the end of him.

Q. Can you tell me when Roger Kelly was off the boat in Bilbao?

A. I know he was ashore in Bilbao.

Q. Can you tell me when he came back?

A. No, I don't think I can.

Q. Do you remember Roger Kelly ever coming up that ladder that morning when those men came off the little boat? [1695]

A. No, not that morning.

Q. To your knowledge, does Third Mate Roger Kelly drink?

A. I don't know to tell you the truth. I never seen him take a drink.

Q. Did you ever see him in an intoxicated condition?

A. I never have.

Q. Now did anybody ever bring it to your attention that he does get intoxicated on the boat?

A. No, and I would surely see that myself, unless it is at night time.

Q. Captain, do you keep the official log on the "Nevada"?

A. I do.

Q. In that log do you record where the ship goes and what ports it touches?

A. Yes, we do. We put down the ship's draft and the free board.

Q. Do you record in that book when a man misses watches?

(Testimony of Hugo Swanson.)

A. No, not unless he is logged.

Q. Not unless he is logged?

A. That is right.

Q. Were you in the court room when I read certain sections from the log to Mr. Tranberg?

A. Yes.

Q. Sections involving what is required to be kept in the log book on foreign voyages? [1696]

A. Yes. In this case it is required to be kept there if I log a man. If I don't log him, it is not required to be put in.

Q. You say when you log a man it requires some forfeiture in pay?

A. Two days for one. That is the law. If he misses one day he loses two the first day and then it goes higher afterwards.

Q. Did you hear me read Section 4 which requires entries in the log giving a statement of the conduct, character and qualifications of each man of the crew?

A. That law has been changed since.

Q. Since when?

A. You are not allowed to put down conduct or character; neither on the discharge nor in the log any more. [1697]

Q. When was that law changed?

A. When these discharges came out. You put down the names and all that, but not any more conduct or ability.

Q. About how long ago did that law change?

(Testimony of Hugo Swanson.)

A. Oh, it is quite a little while ago. I don't remember.

Q. Months or years?

A. When these new discharges came out.

Q. I was reading you from a manual dated April 1, 1938. Has the law been changed since then?

A. No.

Q. Not since then? A. Not since then.

Trial Examiner Myers: Well, what the captain means is that when he made this trip to Spain that the law has since been changed. Is that what you mean?

A. No, but if that is 1938, that is the new law.

Trial Examiner Myers: This is April, 1938?

Mr. Martin: April 1, 1938.

The Witness: That is the new law.

Q. (By Mr. Martin) It has been changed since then?

A. No. It is not required there unless the man is logged.

Trial Examiner Myers: The fact is that you didn't put anything in the log about Buckless?

A. I didn't.

Trial Examiner Myers: Whether the law called for it to be [1698] put in the log or not, is that right? A. That is correct.

Q. (By Mr. Martin) And is the same thing true about Rosen?

A. That is correct. They weren't logged, neither one of them.

Q. Are there any entries in your log making

(Testimony of Hugo Swanson.)

any reference whatsoever to Buckless or Rosen on the "Nevada"? A. No.

Q. Did you consider that anything that Rosen and Buckless did, right or wrong, was not of sufficient importance to put it in the log?

A. On account of not logging them, yes.

Q. You said something about one time when you saw Rosen washing paint? A. Yes.

Q. Did I understand you correctly to say that he was getting a little more than half as much done as the other man with him?

A. That is correct.

Q. Two men were working together?

A. Two men working together, him and the ordinary seaman.

Q. Were they sooging and washing?

A. That is correct.

Q. Will you describe that process to us. When two men do it [1699] together, just how do they do it?

A. Well, it is different ways. We used to say "different ship, different long splashes." Two men wouldn't do it the same way. One might want to do all of it himself and the next watch might come along and one man do the sooging and the next one come behind and wash off. In that case, they didn't do that. That is why I could see.

Q. In Rosen's case which was it?

A. Each man was washing their own. Washing it off.

(Testimony of Hugo Swanson.)

Q. How long did you watch them?

A. Oh, I was there quite a while. I was walking forwards and backwards. I was just taking a half hour walk in the morning.

Q. You are quite sure that each one was washing his own little bit and that they weren't working together?

A. I am quite sure. That is what I was watching at that time.

Q. What was the name of the man who was working with Rosen?

A. I can't remember his name.

Q. How did you know it was Rosen?

A. He had been on the ship long enough for me to know him.

Q. Well, how did you know?

A. Just the same as I know that you are sitting there. The same thing. I know his face. I knew he was on watch. [1700]

Q. Any other way you can remember him?

A. Well, I guess it is.

Q. What is the other way?

A. Take a look at him.

Q. I don't understand you, Captain.

A. I said look back and see.

Q. Would it be difficult for you to mistake him?

A. Yes, very difficult. It was difficult to mistake him.

Q. Why?

A. As I say, he has got a bald head.

(Testimony of Hugo Swanson.)

Q. He did have at that time? A. Yes.

Q. Well now if Mr. Rosen came up to you speaking on behalf of the crew would you be likely to remember it was him because he had a bald head?

A. No, I don't think it would.

Q. You would not remember that?

A. I may do it, but Buckless never did speak to me—or Rosen never did speak to me about union. [1701]

Q. I thought you said you didn't remember who spoke to you about unions?

A. I remember Buckless.

Q. I beg your pardon.

A. I remember Buckless spoke to me about the Union. He told me he was a union man.

Q. But do you remember about Rosen speaking to you? A. I do not.

Q. Making some complaints about overtime or anything else?

A. The only complaint we had about the overtime was at Cat Island, but I don't remember who spoke at that time. Everybody did or most of them.

Q. Were Buckless and Rosen fired at the conclusion of that trip after this discussion in Cat Island?

A. No, no, a long time afterwards.

Q. Captain, do the working rules say anything about being paid for overtime while the ship is at anchor?

Mr. Williams: Mr. Examiner, I protest. This

(Testimony of Hugo Swanson.)

matter of overtime has been explained by other witnesses for the Board, it has been explained by the captains, and it has been explained by everybody, that there was a request for overtime, it was held in abeyance for a little while, and finally paid. So it is not in controversy in this case.

Trial Examiner Myers: I can see what Mr. Martin is driving at. So I will overrule the objection.

[1702]

Mr. Williams: In addition to that, the working rules are already in evidence.

Trial Examiner Myers: I understand what Mr. Martin is trying to prove. So I will overrule your objection.

Mr. Williams: We take exception.

Trial Examiner Myers: He wants to connect the visit of these two gentlemen with the captain. Isn't that right?

Mr. Martin: That is correct.

Trial Examiner Myers: Go ahead.

A. I don't remember if it says anything about anchor, but the overtime rules is in there and the ship wasn't in harbor at that time.

Mr. Martin: Will you read the answer please?

(The last answer was read.)

Q. (By Mr. Martin) Did I understand you to say, Captain, that Mate Tranberg told you that he intended to dismiss Gordon Rosen; to fire him?

A. I did.

Q. When did he tell you that?

A. The same day as he was paid off. He had told

(Testimony of Hugo Swanson.)

me before that he wanted to get rid of him and he let it slide.

Q. You say he had told you before?

A. Yes.

Q. When did he tell you that day?

A. In the forenoon some time. [1703]

Q. After he had done it or before he had done it?

A. Before he had done it.

Q. Captain Swanson, can you tell me what a preferential employees sheet is or it may be called a preferred employees sheet?

A. I never seen one.

Q. What do you say?

A. I never seen one.

Q. Don't you know what that is?

A. No.

Q. You have some sheet or book that you pass out to old men in the service of the company or men whose work you value?

A. No, we haven't anything like that.

Q. Do you have any kind of preferential list?

A. None whatever.

Q. Captain Swanson, if I am correct, Mr. Buckless left the "Nevada" on or about April 19, 1938?

A. About that time, yes.

Q. Did you subsequently see him when he was working on the SS "Washington"?

A. No, I didn't see him.

Q. Do you remember an occasion when Mr. Buckless wanted to board the "Nevada" and you said: "No, no, don't come on this ship"? [1704]

(Testimony of Hugo Swanson.)

A. Not Buckless.

Q. Rosen, I mean. I am sorry.

A. Rosen, yes. That is correct.

Q. That is correct?

A. That is correct, yes.

Q. Why did you tell him that?

A. Don't want visitors aboard.

Q. I beg your pardon?

A. We don't want any visitors. We have big signs up to that effect. It is always disallowed; no naked light, no visitors, no smoking.

Q. Even if he used to work on the boat, don't you let him aboard to see old friends?

A. Oh, yes, if he works on the boat.

Q. I mean if he used to work on it, you don't allow him aboard to see old friends?

A. He had already been on board.

Q. When had he been aboard?

A. Some time before. I was told about that. I don't know about that myself. I was told. [1705]

Q. Well, I don't quite understand why he was shooed off that way. Could you explain that a little more?

A. You would not like to have a man who wouldn't work for you to come and visit you.

Q. You said you just fired him because he was a lagging worker, is that correct? A. Yes.

(Testimony of Hugo Swanson.)

Q. Yet you didn't want him coming back on board. Was he poison or something?

A. No, we don't allow any one on board at all. We allow some of the office people on board, of course, but outside of those we don't want them on board.

Q. Did you bear any ill will toward Mr. Rosen at that time?

A. No, just didn't want him on the boat.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Van Dusen) Captain, are you in charge of the ship's hospital?

A. The steward really is.

Q. Are you over the steward?

A. I am over the steward, but I leave it to the steward.

Q. Do you ever use liquor in case of sickness on the part of seamen?

A. Well, if I know a man was sick and he needed a drink; [1706] even if a man had been on a drunk before and I knew he was a good man, I would give him a drink.

Q. Is that why you keep some liquor on board?

A. That is one reason for it, yes, sir.

Mr. Van Dusen: That is all.

Trial Examiner Myers: I just want to ask a few questions, Captain.

The quartermaster's position on your vessel is an important position, is it not?

(Testimony of Hugo Swanson.)

A. Quite important.

Trial Examiner Myers: A responsible position?

A. Yes, sir.

Trial Examiner Myers: Especially at sea, is that right? A. Yes, it is.

Trial Examiner Myers: Now who did you say was with Mr. Buckless when you saw him carrying the beer aboard your vessel?

A. An ordinary seaman. I can't recall his name. It was an ordinary seaman.

Trial Examiner Myers: Was it Hart; H-a-r-t?

A. No.

Trial Examiner Myers: Do you know George Hart? A. Hart was quartermaster.

Trial Examiner Myers: Do you know him?

A. Well, I haven't seen him for a long time, but I think I [1707] do.

Trial Examiner Myers: You know he was a quartermaster on your vessel at one time, is that right? A. I remember him.

Trial Examiner Myers: Now did Mr. Buckless or Mr. Rosen ever present you any grievances for the crew?

A. No, the only time, as I say, was at Cat Island. The only time that I can remember.

Trial Examiner Myers: Did they come to you and tell you that they represented the crew?

A. No, they didn't.

Trial Examiner Myers: What did they say to you? A. The whole crew came up.

(Testimony of Hugo Swanson.)

Trial Examiner Myers: I mean didn't they come first?

A. I couldn't tell you who came first.

Trial Examiner Myers: Did anybody take up with you the question of how much the crew should receive as a bonus for making the Spanish trip?

A. No. The bonus was already in effect at that time.

Trial Examiner Myers: Wasn't there some talk that some other lines gave \$50.00 per port to go into the war zone instead of \$50.00 a trip?

A. I remember hearing of it, but nobody asked me that.

Trial Examiner Myers: Nobody brought it to your attention? [1708]

A. That is correct.

Trial Examiner Myers: That is, neither Buckless nor Rosen?

A. Nobody brought it to my attention.

Trial Examiner Myers: You say you don't know what union Buckless belongs to?

A. No, I don't know what union he belongs to.

Trial Examiner Myers: And the first time you knew he belonged to a union was when you fired him?

A. When he came in for his discharge and half day's pay.

Trial Examiner Myers: Did you see any union activities on board your vessel at all?

(Testimony of Hugo Swanson.)

A. No, I didn't.

Trial Examiner Myers: What about the time they voted for certification under the National Labor Relations Act?

A. I wasn't even aboard at the time it was done.

Trial Examiner Myers: You were not aboard?

A. No.

Trial Examiner Myers: But you heard that the vote was going to take place, is that right?

A. Yes, I heard it.

Trial Examiner Myers: You knew that all the unlicensed men were going to vote, is that right?

A. Yes, I heard of that before.

Trial Examiner Myers: And you knew that there must [1709] have been some talk of union and unionization, is that right?

A. Possibly. I couldn't say I know. I didn't hear it.

Trial Examiner Myers: Do you know how many men on your boat voted? A. I do not.

Trial Examiner Myers: Do you know how many men on your boat belong to the N. M. U.?

A. I don't know. I don't know even about the crew I got now. I don't know a thing about it.

[1710]

Trial Examiner Myers: Did you know that Buckless was the deck delegate for the union?

A. I didn't know it.

Trial Examiner Myers: Or that Rosen was the boat delegate or the ship delegate for the union?

(Testimony of Hugo Swanson.)

A. No. That is the first time I ever heard any of it.

Trial Examiner Myers: They never told you that?
A. Never told me.

Trial Examiner Myers: Or don't you know how long the ship was in port after you saw Buckless with the beer?

A. No, I can't remember the time.

Trial Examiner Myers: Now, after you fired Buckless did you notify the company that you had fired him for drunkenness?

A. No, I don't think I did. I did notify them around the ship but I didn't notify the company.

Trial Examiner Myers: Well, would you employ on your ship a habitual drunkard as a quartermaster?
A. I wouldn't if I knew it.

Trial Examiner Myers: Do you know that The Texas Company reemployed Mr. Buckless soon after or within a short time after you fired him for being a habitual drunkard as a quartermaster on the SS "Washington"?

A. I heard now that he was on the "Washington".

Trial Examiner Myers: What is that? [1711]

A. I heard now that he was on the "Washington", but I didn't know it.

Trial Examiner Myers: And did you report the reason why you fired Rosen to the company?

A. No, I didn't.

Trial Examiner Myers: Any other questions?

(Testimony of Hugo Swanson.)

Q. (By Mr. Van Dusen) Captain Swanson, do you call a quartermaster an officer of the ship?

A. A petty officer.

Q. Who are the petty officers?

A. That is the boatswain—that is a mistake. The quartermaster is not a petty officer.

Q. He is not a petty officer? A. No.

Q. Well, is he an officer? A. No.

Q. He is not? A. No.

Q. Now, Captain, did Mr. Buckless tell you he was a union man before or after you told him he was dismissed? A. After he was dismissed.

Mr. Van Dusen: That is all.

Mr. Martin: One more question.

Recross Examination

Q. (By Mr. Martin) Does the quartermaster eat in the [1712] petty officers' messroom?

A. Yes, he does.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Van Dusen) Who eats in the petty officers' messroom? A. The boatswain.

Q. Who else?

A. The quartermasters, oilers.

Q. The oilers? A. Oilers, yes.

Q. And who else? A. And the pumpmen.

Q. All the pumpmen?

A. Two pumpmen, yes.

Mr. Van Dusen: That is all.

Trial Examiner Myers: All right. You are excused, Captain.

(Witness excused.) [1713]

HERMAN HOPPER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Will you give the reporter your name and address?

A. Herman Hopper, 5046 Washington Boulevard, Groves, Texas.

Q. (By Mr. Van Dusen) Mr. Hopper, are you now employed by The Texas Company?

A. I am.

Q. In what capacity?

A. Second mate on the "Nevada".

Q. How long have you been second mate on the "Nevada"? A. About a year and a half.

Q. About a year and a half?

A. Yes, sir.

Q. Prior to that time were you employed on any other ship of The Texas Company?

A. I have been on the "Nevada" about five years.

Q. What other jobs have you held on the "Nevada"?

(Testimony of Herman Hopper.)

A. A. B., quartermaster and third mate. [1715]

Q. Have you been employed on any other ships of any other company?

A. Yes, I have been employed by the Cities Service, and Gulf, and also with other Texas Company ships.

Q. How long have you been on the sea, Mr. Hopper? A. Since 1926.

Q. Did you start as an A. B. or ordinary seaman? A. Ordinary seaman.

Q. And what jobs have you held from the time you were ordinary seaman until the present time?

A. A. B., quartermaster, third and second mate.

Q. Do you know Mr. Buckless?

A. I do, yes.

Q. Do you know Mr. Rosen, J. Gordon Rosen?

A. I do.

Q. Do you recall about when Mr. Buckless joined the "Nevada"?

A. Yes, sometime in the middle of November of 1937.

Q. Middle of November, 1937? A. 1937.

Q. Do you recall when he left the "Nevada"?

A. The middle of April, 1938.

Q. Do you recall when Mr. Rosen joined the "Nevada"?

A. In the early part of January.

Q. What year? [1716] A. This year.

Q. Do you recall when he left the "Nevada"?

(Testimony of Herman Hopper.)

A. Yes. He left about the same time that Buckless did, the middle of April.

Q. Now while Mr. Buckless was on the "Nevada" what jobs did he have?

A. He was employed as an A. B. for a short time, and from then on as boatswain.

Q. As boatswain until when?

A. Until he got off.

Q. What job did Mr. Rosen have?

A. He was an able seaman.

Q. Able-bodied seaman? A. Yes, sir.

Q. As second mate, what were your duties on the "Nevada"?

A. Well, I am in charge of the 12:00 to 4:00 watch, and I am supposed to assist the master in navigation and also I am in charge of the 12:00 to 4:00 watch, and assist in discharging and loading cargo, under orders of the chief mate.

Q. Was Mr. Rosen or Mr. Buckless under your supervision at any time?

A. No, at no time.

Q. Did you have any men under you at all?

A. My immediate watch, 12:00 to 4:00, quartermaster, ordinary seaman, and the A. B. on night watch. [1717]

Q. While you were on watch was Mr. Buckless ever on duty?

A. 12:00 to 4:00 in the afternoon he would be on duty, yes, sir.

(Testimony of Herman Hopper.)

Q. How about Mr. Rosen?

A. Mr. Rosen would be on 8:00 to 12:00. I would usually be asleep. I would often be up from practically 8:00 to 8:30 taking a sight in the morning, and then I would be in bed, or reading or something, in my room.

Q. Would you or not under those circumstances have occasion to see Mr. Rosen very much?

A. Well, in the morning, from 8:00 to 8:30.

Q. Now have you since the date Mr. Buckless joined the "Nevada" had occasion to observe his condition and behavior?

A. Yes, I have noticed him on occasions. I have noticed him on occasions being under the influence of liquor.

Q. Well now tell me about that, in your own words. I want you to tell me what you observed about Mr. Buckless' condition and behavior.

Trial Examiner Myers: What he heard?

Mr. Van Dusen: No, describe what he saw.

A. Well, the only time I would see Buckless would be leaving port in the morning. I, as second mate, am in charge of leaving go the after end of the ship, and I had occasion to see Buckless under those conditions. And then in the afternoon leaving port at times he was under the influence [1718] of liquor. I have noticed him.

Q. On about how many occasions would you say you saw him under the influence of liquor?

(Testimony of Herman Hopper.)

A. Well, since I have no real connection with him, I never did pay much attention to it.

Q. Approximately how many times?

A. Oh, I would say four or five times.

Q. Four or five times? A. Yes, sir.

Q. Now do you remember any specific instances?

A. Well, I remember leaving Boston, the latter part of December of 1937.

Q. Well, tell us about that.

A. Well, I just noticed him under the influence of liquor. I had no words with him of any kind.

Q. Are you sure he was under the influence of liquor? A. Oh, I am positive of that.

Q. About what time was that of day?

A. That was leaving the port; I imagine 6:00 or 7:00 o'clock in the morning.

Q. Was this on board ship?

A. On board ship, yes.

Q. Do you know whether or not Mr. Buckless should have been on duty at that time?

A. Well, leaving go, when the ship is leaving port, all the [1719] seamen are on duty, letting go the lines.

Q. Including Mr. Buckless?

A. Including Mr. Buckless.

Q. Do you know of any other specific instance?

A. Well, I have noticed him in different ports.

Q. Any other port that you can recall?

A. Oh, perhaps in Amesville, and Port Arthur. I couldn't be certain of it.

(Testimony of Herman Hopper.)

Q. New Haven?

A. No, not in New Haven. I was on vacation one trip to New Haven.

Q. When were you on vacation?

A. I got off the first of March, until the 20th or 22nd of March.

Q. From the first of March until the 20th or 22nd of March?

A. Yes, sir.

Q. This year?

A. This year, yes, sir.

Q. Now can you say anything about Mr. Buckless' behavior when he first joined the "Nevada"?

A. No, I never did pay much attention to him; but when he first came on he seemed to be all right.

Q. When, if at all, did you notice any change?

A. Well, I imagine on the trip to Spain was the first I noticed him at all, because the short trips to Corpus, I [1720] haven't much time to pay attention to him; and the Boston trip, that was the first, I imagine, I noticed him.

Q. Was this Boston trip before or after the trip to Spain?

A. It was before the Spanish trip.

Q. How long before?

A. Well, we came from Boston to Port Arthur, and directly to Spain. [1721]

Q. What time were you in Boston?

A. About December 27, I imagine.

Q. When did you leave for Spain?

A. The early part of January.

(Testimony of Herman Hopper.)

Trial Examiner Myers: You say you went from Port Arthur to Boston, and then to Spain?

A. No, from Houston to Boston.

Q. And then to Spain?

A. And back to Cat Island, and picked up a load of crude, and went to Port Neches, I believe, and came from Port Neches to Port Arthur, and then to Spain?

Q. When did you say you left for Spain?

A. The early part of January, 1938.

Q. And Boston was just prior to that?

A. And the Boston was just prior to that Spanish trip. I would say that was the first I really noticed Buckless, was at Boston.

Q. You mean at Boston? A. At Boston.

Q. Do you recall anything else about the behavior of Buckless at all?

A. Well, I noticed him on the dock at Bilbao. That was the next time I noticed. And we came back from Spain, and I was on my vacation, when we got back to Port Arthur. And also I have seen him on occasions after that, but I couldn't name [1722] any certain port.

Mr. Van Dusen: That is all.

Cross Examination

Q. (By Mr. Martin) Mr. Hopper, were you in the court room and listening to all the testimony of Mate Tranberg and Captain Swanson?

A. I was.

(Testimony of Herman Hopper.)

Q. Mr. Hopper, when a boat is letting go of the dock, and you are about to leave the dock, did you testify that you are at the aft end of the ship?

A. That is right.

Q. As second mate? A. That is right.

Q. Now where is the boatswain stationed under those circumstances?

A. He is on the forward end with the mate.

Q. On the forward end with the mate?

A. Yes, sir.

Q. So if you were standing at the back end, and Mr. Buckless was standing at the front end of the boat, you might have a little difficulty in distinguishing his behavior?

A. No, because the boatswain turns the crew to, and I am usually around when the gank plank is taken in before letting go the lines, you understand, and I would have reason to notice then. [1723]

Trial Examiner Myers: What did he say that made you believe he was under the influence of liquor?

A. Well, you can tell when a man has been drinking. I never did see him completely drunk. But the man had been drinking. That is about all I can say about it.

Q. (By Mr. Martin) Now were there others who also showed signs of having been doing some drinking?

A. I have seen other men show signs, yes, but not as many times as Buckless has.

(Testimony of Herman Hopper.)

Q. Now how many times will you say you have seen Mr. Buckless under the influence or giving evidence of having done any drinking?

A. Four or five times, I would say.

Q. Four or five times in the five months he was on the boat?

A. Yes. I was off the boat, don't forget, for almost one of those five months.

Q. All right. Then it would be four or five times during the period of four months that you were on the boat with him? A. I would say so, yes.

Q. That is an average of about once a month, or a little more?

A. Well, don't forget the Spanish trip was two months.

Q. But it averages up the same? A. Yes.

Trial Examiner Myers: That evens the score?
[1724]

A. Yes, sir.

Q. (By Mr. Martin) Now would you say that is a high average for a sailor?

A. Well, I don't know whether it is or not. Maybe it would be, yes.

Q. Do you drink very much?

A. Not very much. I drink.

Q. Do you drink aboard the boat?

A. Sometimes.

Q. Do you drink as much as once a month on the boat? A. I don't imagine we do, no.

Q. How often would you say it averages?

(Testimony of Herman Hopper.)

Trial Examiner Myers: Drinking, or being drunk?

Q. (By Mr. Martin) Just seeing the evidence of drinking. We have no evidence from this witness that he ever saw Mr. Buckless drunk. He merely says he saw him when he thought there was evidence that he had been drinking.

A. You want to know how many times I drink?

Q. On the average.

A. Oh, perhaps I will take a bottle or two of beer every time we come to Port Arthur. I don't go ashore up North, as usual.

Q. How often does the boat come to Port Arthur?

A. I don't know; every trip, every twenty or thirty days.

Q. That would be an average of once a month in Port Arthur, [1725] wouldn't it? A. Yes.

Q. How often do you drink while the boat is at sea? A. I never drink at sea.

Q. But even drinking that amount you average as much as you say and you believe as to your knowledge you saw Mr. Buckless average?

A. Oh, I was never in the condition that Mr. Buckless was in aboard ship.

Mr. Williams: Mr. Examiner, I submit that this is entirely irrelevant, that the witness might take a drink. We are talking about being under the influence of liquor, or being drunk. It is not clear in my mind just what some of the witnesses mean by

(Testimony of Herman Hopper.)

being drunk or under the influence of liquor. This has clearly nothing to do with Buckless' condition, and I object to it.

Trial Examiner Myers: Overruled.

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Mr. Hopper, do I understand you consider yourself essentially a non-drinking sailor?

Mr. Williams: Mr. Examiner, that is calling for purely an opinion and conclusion. [1726]

Trial Examiner Myers: Overruled.

Mr. Williams: We take an exception.

A. Well, I never reported for duty drunk or unable to perform my duty. I believe no one would say I was drunk.

Trial Examiner Myers: Couldn't truthfully say you were drunk? A. No, sir.

Q. (By Mr. Martin) Can you answer my question "yes" or "no"?

A. What is the question please.

Q. The question is would you say that you are essentially a non-drinking sailor, as sailors go?

A. Well, I think I have answered it myself.

Q. Would you say "yes"?

A. I would say maybe. I have answered it, as far as I can.

Q. Do you drink more or less than the average sailor? A. Less, I would say.

Q. Mr. Hopper, did you testify that Mr. Buckless never worked under your supervision?

(Testimony of Herman Hopper.)

A. That is right.

Q. Have you ever observed Mr. Buckless where he was unable—have you ever observed Mr. Buckless in a condition when he was not performing his duties?

A. At one time I missed Mr. Buckless.

Q. Did you see him then?

A. I didn't see him. I say I missed him. And I heard, [1727] understand, that he had been drunk in his bunk.

Q. But you don't know anything about it personally?

A. Personally, I was on watch on the bridge.

Q. I see. Now, Mr. Hopper, did I understand that on that trip that you refer to when the boat was in Boston, during the last few days of 1937, that the vessel left Boston on December 27, 1937?

A. About.

Q. About December 27, 1937? A. Yes, sir.

Q. And did you say on that occasion Mr. Buckless came aboard the boat in such condition that you believed he had been doing some drinking?

A. I didn't say he came aboard. I said when he turned to I noticed that he was intoxicated. I don't know when he came aboard, or how he came aboard.

Q. When he turned to? A. That is right.

Q. Now, tell us about the condition of any other sailors returning to the boat and turning to on or about December 27, 1937?

A. I don't remember.

(Testimony of Herman Hopper.)

Q. You just remember Mr. Buckless' case?

A. Yes. He being the boatswain, he would be the one that I would notice, anyway. He is supposed to be at the head of [1728] the crew.

Q. Now, December 27 is customarily two days after Christmas, isn't it? A. I imagine so.

Q. And is Christmas still a holiday in this country?

A. It is, as far as I know, unless it has been changed.

Q. Would you say it is true or is not true that sailors customarily celebrate a little more during the Christmas season than during regular periods of the year?

A. That makes no difference to me. I don't know whether they do or not.

Trial Examiner Myers: He means could you overlook the fact that during the Christmas holidays——

A. You understand I have nothing to do with that.

Q. There is more of a holiday spirit, a jovial spirit, and therefore they imbibe a little more liquor than ordinarily?

A. I have nothing to do with that.

Q. Of course that has nothing to do with this, whether the men drink Christmas, New Years or any other time?

A. That is the way I feel too.

(Testimony of Herman Hopper.)

Mr. Martin: Would you read that last remark of the Examiner.

(The statement was read by the reporter.)

Q. (By Mr. Martin) Mr. Hopper, is it not true that throughout the country people on land and on sea customarily [1729] do a little more drinking during the holiday season than normally?

Mr. Williams: Mr. Examiner, we certainly urge an objection to any such questioning as that.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Martin) Mr. Hopper, you have testified have you that the only person you knew that was under the influence of liquor on December 27, 1937, was Mr. Buckless? A. Yes.

Q. That is, on the "Nevada"? A. Yes.

Q. And despite the fact that was two days after Christmas, and during the holiday season, you don't remember whether anybody else was drunk at that time? A. No, sir.

Trial Examiner Myers: You mean you don't remember any one being drunk, or you don't remember seeing anyone drunk?

A. I don't remember seeing anyone.

Q. Did Mr. Buckless do anything that he should not have done?

A. Well, as I said before the boatswain is supposed to be at the head of the crew, and I have nothing to do with the crew at all; but I would notice the boatswain on those occasions because he is supposed to be the boss of the crew.

(Testimony of Herman Hopper.)

Q. He was there on the job at the head of the crew? [1730]

A. He was there, but he was pretty well intoxicated.

Q. Would you say that the crew was not performing its duty? A. The ship sailed.

Q. And so the crew did perform its duty?

A. Anyone can take lines in. Naturally they performed their duty, or the ship couldn't sail.

Q. Now, Mr. Hopper, you said that perhaps Mr. Buckless was drunk at Amesville, is that correct? A. Yes, sir.

Q. And then you testified that four or five times you observed him and you knew he had been drinking. Now, we are trying to get this testimony down to actual facts, and out of the realms of possibilities and speculations and perhapses. Now, will you please tell me just where you saw Mr. Buckless in this condition you mentioned four or five times?

A. Well, as I said before, I have no direct charge over the boatswain or the sailors, you understand, and, while I would notice it, since it would not make any particular difference to me personally, that is up to the mate and the captain, since it would not make any difference to me I would not pay too particular attention to him. But if it had been a quartermaster on a night watch I would have noticed that. [1731]

Q. Then you are unable to bring it down specifically out of the realms of possibilities?

(Testimony of Herman Hopper.)

A. I am unable to tell you what ports, what certain ports it happened in, yes, if that is what you mean.

Q. By the way, Mr. Hopper, at the conclusion of that New Haven trip that you have been referring to in your testimony, were new articles signed?

A. At the conclusion of the New Haven trip?

Q. The one you have been testifying about. Excuse me. I am referring to the Boston trip.

A. At the conclusion of the Boston trip, foreign articles were signed.

Q. New articles were signed?

A. Naturally. They were foreign articles going to Spain.

Q. Is it true also that at the conclusion of a series of coastwise trips, just before the beginning of a foreign trip, each seaman on the vessel is given a certificate of discharge from his coastwise voyages?

A. I know nothing about it.

Q. You don't know? A. No, sir.

Q. Is it true, Mr. Hopper, that at the conclusion of the Spanish trip to which you have been referring, no coastwise shipping articles were signed?

A. Yes, I believe so. [1732]

Q. By all the sailors on the boat?

A. Yes, everyone that stayed on.

Q. Including yourself? A. Including me.

Mr. Martin: That is all.

(Testimony of Herman Hopper.)

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Hopper, I believe you just testified that Mr. Buckless was not under your supervision? A. Yes.

Q. Would you or would you not have the same opportunity of observing Mr. Buckless as the chief mate and the captain?

A. No, I would not, ordinarily.

Q. Ordinarily?

A. Because I sleep, as I said before, from 8:00 until 12:00; and then from 12:00 until 4:00 I am on watch, and I am taking sights, and I am doing a lot of work, and I would not have time to notice him, where they would notice him all day.

Q. Would you or not have the opportunity to see him at every port you touched?

A. No, I would not. If we docked in the morning, the second and third mate are on night watch, and I would more than likely go there during the time, and come back and stand my night watch. Up North, I don't go ashore much, but I always keep in my room. [1733]

Q. Except to those instances to which you referred when Mr. Buckless was under the influence of liquor, would you say he did or did not show evidence of drinking more than a little beer?

A. Oh yes, much more.

Mr. Van Dusen: That is all.

(Testimony of Herman Hopper.)

Recross Examination

Q. (By Mr. Martin) One more question. Mr. Hopper, when you see a man in an intoxicated condition or indicating in some way that he has been doing some drinking, and you see him two days after Christmas, do you consider that evidence that the man is an habitual drunkard?

Mr. Williams: We object to that as being purely a conclusion.

Trial Examiner Myers: Overruled.

Mr. Williams: We except. I will state further that this witness has not stated that Buckless was an habitual drunkard.

Mr. Wright: The other witnesses did.

Trial Examiner Myers: Overruled.

Mr. Williams: Note our exception.

A. As I said, the ship has work to be done, and it doesn't make any difference whether it is after Christmas or any other time; but I have not seen Mr. Buckless at all times. I have only seen him drunk or under the influence of liquor [1734] four or five times.

Mr. Martin: Mr. Reporter, will you please read back my question to the witness.

(The question was read by the reporter.)

Mr. Williams: We object on this ground, that this witness is not a judge of evidence surely.

Trial Examiner Myers: Overruled.

A. I would form no conclusion myself. If I saw

(Testimony of Herman Hopper.)

you drunk one time, or a dozen times, I wouldn't know you well enough to form a conclusion.

Mr. Martin: That is all.

Trial Examiner Myers: Your immediate superior, as I understand it, on the "Nevada" is Mr. Tranberg?

A. That is right.

Q. He is quite a strict disciplinarian, isn't he?

A. Well, he has no reason to say anything to me or the third mate, I don't imagine. We have never——

Q. Do you know what "disciplinarian" means?

A. Someone that makes you live up to the rules, I would say.

Q. I mean in the matter of handling the crew, they have to toe the mark, don't they?

A. I think he gives the crew quite a few chances myself.

Q. Do they have to obey the rules?

A. He gives them certain duties to do, and he expects them to do them. [1735]

Q. Do you believe Mr. Tranberg would have had Mr. Buckless standing next to him when they were leaving the Port of Boston, if Mr. Buckless was under the influence of liquor?

A. I don't believe Mr. Tranberg was on that trip.

Trial Examiner Myers: I am sorry. All right.

Mr. Martin: That is all. [1736]

CHARLES L. OLSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Will you give your name to the reporter, please, and address?

A. Charles L. Olson, 2801 Thirteenth Street, Port Arthur, Texas.

Q. (By Mr. Van Dusen) Mr. Olson, are you now employed by The Texas Company?

A. How is that?

Q. Are you now employed by The Texas Company? A. Yes, sir.

Q. In what capacity?

A. Well, I am shipkeeper on the "Maryland".

Q. Shipkeeper?

A. She is laid up indefinitely on the west bank.

Q. What is that?

A. She is not in commission. She is laid up indefinitely on the west bank. I am sort of watchman and shipkeeper.

Q. How long have you been shipkeeper?

A. Since the 16th of this month.

Q. Have you had any other jobs with The Texas Company? A. Yes, sir.

Q. What? [1737]

A. Chief officer, second officer, night mate.

Q. On what ships have you been chief officer?

A. On the "Nevada" and the "Washington".

(Testimony of Charles L. Olson.)

Q. You mean chief mate? A. Yes, sir.

Q. You have been chief mate on the "Washington", have you? A. Yes, sir.

Q. When were you chief mate on the "Washington"?

A. Well, I transferred from the "Nevada" to the "Washington".

Q. About when?

A. Early part of January.

Q. Early part of January of this year?

A. Yes, sir.

Q. How long were you chief mate on that vessel?

A. I just made relieving trip; not a relieving trip. It was a permanent position, but my mother took sick in Chicago, and I left to go home.

Q. How long were you chief mate on that boat?

A. One trip.

Q. And then you went to the "Maryland"?

A. No, sir, I went on the tug "North American" for a couple of relieving trips.

Q. Yes?

A. Vacation time. And then I went night mate for a month, [1738] relieving night mates on twenty some odd ships during that month; and then from there to the "Maryland".

Q. How long have you been on the sea, Mr. Olson? A. About twenty-four years.

Q. What positions have you held since you have been on the sea?

(Testimony of Charles L. Olson.)

A. Ordinary seaman, A. B., quartermaster, third mate, second mate, chief mate and master.

Q. How long have you been with The Texas Company? A. On and off since 1921.

Q. And you have held all those various jobs with The Texas Company, have you?

A. Yes, sir. Well, I have never held an unlicensed job with The Texas Company.

Q. Did you say you had been chief mate on the "Nevada"? A. Yes, sir.

Q. Just when? A. I relieved Mr. Tranberg.

Q. About when?

A. From about the 15th of December until the early part of January.

Q. Did he come back from the Spanish trip, or did you take it?

A. No, he came back off the Spanish trip.

Q. Was that when he came back? [1739]

A. Yes, sir.

Q. Where did Mr. Tranberg come from, where had he been? A. On his vacation.

Q. On vacation? A. Yes, sir. [1740]

Q. Do you know Mr. Buckless? A. Yes, sir.

Q. Do you see him in the court room?

A. There is Mr. Buckless there (indicating).

Q. Is that Mr. Buckless? A. Yes, sir.

Q. Do you recognize him? A. Yes, sir.

Q. Did you see Mr. Buckless on the "Nevada"?

A. He was boatswain on the "Nevada".

(Testimony of Charles L. Olson.)

Q. What is that?

A. He was boatswain on the "Nevada".

Q. While you were chief mate on the "Nevada" relieving Mr. Tranberg, was Mr. Buckless under you?

A. Yes, sir.

Q. You say he was the boatswain?

A. He was the boatswain.

Q. At what port did you get on the "Nevada"?

A. I joined the "Nevada" at Houston.

Q. At Houston?

A. Yes, sir.

Q. Now what date did it leave Houston?

A. It left Houston either on the 16th or 17th of December.

Q. Now what was the next port of call?

A. Boston. [1741]

Q. Do you know about what time it reached Boston?

A. The 27th of December, 1937.

Q. Do you know when it left Boston?

A. It left Boston on the morning of the 29th. I believe it was on Wednesday morning of the 29th of December.

Q. Now what was the next port of call the "Nevada" made after leaving Boston?

A. Originally we had orders to go to Corpus Christi, but at sea we got orders to change for Cat Island.

Q. Cat Island?

A. Louisiana.

Q. About when did you arrive at Cat Island?

A. I can't recall it. The first part of January.

(Testimony of Charles L. Olson.)

Q. Approximately the first part of January?

A. Yes, sir.

Q. From Cat Island where did you go?

A. I think we went to Port Arthur or Port Neches; one of the two ports. In the Sabine District, anyhow.

Q. About when did you arrive at Port Neches or Port Arthur?

A. I can't say more than the early part of January.

Q. Did you then leave the ship?

A. Yes, sir, I was relieved again.

Q. Why did you leave the ship?

A. Mr. Tranberg came back from his vacation.

Q. Now at the beginning of and during the course of that [1742] trip did you have occasion to observe the conduct and behavior of Mr. Buckless?

A. Oh yes.

Q. Now starting with the beginning of the trip will you please tell me what you observed regarding Mr. Buckless' condition and behavior?

A. Well, all I got to say, I joined the ship in Houston. Naturally I was a new man and had to be acquainted with the crew and I didn't have much time to check up on anybody and naturally the boatswain was the first man I looked to, because he was immediately under me and took charge of the sailors in the day time. I remember that Mr. Buckless was not in any too sober a condition in Houston; that is, at Galena Park before we left Houston.

(Testimony of Charles L. Olson.)

Q. What was his condition?

A. I couldn't say he was drunk, because I don't know the total definition of drunkenness, but I will say he was under the influence of liquor.

Q. Was he able to attend to his duties?

A. He was at that time, yes.

Q. Now go on from that point.

A. Well, at sea naturally there was no liquor aboard that I knew of or heard of. It was a normal trip. Outside of bad weather it was a normal trip and we made Boston and we got there, I believe, on the 27th. If I am not mistaken it was [1743] Monday night, the 27th of December, 1937, and the next morning we docked. Just exactly the time I don't know.

Q. You docked on the 28th?

A. We anchored at President Roads in Boston Harbor that night and we docked the next morning.

Q. On the 28th you docked? A. Yes, sir.

Q. Go ahead.

A. And on the 28th it was a snowy, blustery day, you might say, and it has always been customary for me, although I haven't had permission of the company to do it, to give the sailors half a day off in port if they get their work done. If they get their work done by noon and I am satisfied with it, they get off at noon. The rest of the day they have to themselves to do what they want to do, excepting the men on watch, of course.

(Testimony of Charles L. Olson.)

Now you are referring to Mr. Buckless in particular or just the crew?

Q. Well, first deal with Mr. Buckless.

A. Well, that night I didn't notice anything.

Trial Examiner Myers: What night do you mean?

A. On the night of the 28th in Boston alongside the dock. I didn't notice anything in particular then, but the next day is when I noticed he had been drinking plenty.

Trial Examiner Myers: That is on the 29th?

[1744]

A. That is on the 29th, sailing day.

Q. (By Mr. Van Dusen) What time of the morning? A. All day.

Q. Had he been ashore?

A. He had been ashore all the night before and where he got the liquor all the next day I don't know. A man normally should sober up the next day.

Q. What was his condition that day?

A. The biggest part of the day he was turned in.

Q. Was he supposed to be on duty?

A. On duty, yes, sir.

Q. Was he on duty?

A. No, sir, he was not on duty.

Q. Well, wasn't it your job to see that he was on duty? What did you do?

A. I didn't miss him so much until after I came on watch at 4:00 o'clock. Earlier in the day we

(Testimony of Charles L. Olson.)

had been finishing and touching up things, and naturally, going to sea, you have to have things seaworthy, things straightened out on deck, and in the afternoon it is customary for me to take a little nap. I am on watch at 4:00 o'clock in the evening and stand until 8:00. I came on at 4:00 o'clock. I didn't see any signs of Buckless or any of the rest of the crew who were supposed to be working with him. They weren't there. The next thing I sent one of my sailors on watch down to call [1745] Buckless and for him to report to me on the bridge. Naturally after I was on watch I couldn't leave the bridge without being relieved by the captain. I sent down at least twice and if I am not mistaken it was three times I sent for him and after a long wait, it was close to 5:00 o'clock when he did come up in his bedroom slippers and he was cleaned up when he came on the bridge, but never during the afternoon that I know of and up until 5:00 o'clock was he on watch. On duty, I mean. He was working days. [1746]

Q. What was his condition at that time?

A. He was drunk at that time. I didn't want to talk to him. He was too drunk to talk to him. I told him to turn in. I didn't want to talk to him and I couldn't use a drunken man on deck.

Q. Where was the ship on Christmas day?

A. I think it was about two days from Boston. It was south of Nantucket Shoals.

(Testimony of Charles L. Olson.)

Trial Examiner Myers: You were going to Boston?

A. Going toward Boston, yes, sir.

Q. (By Mr. Van Dusen) Did you notice any other seamen under the influence of liquor?

A. Yes.

Q. How many?

A. One in particular. I recall him very well but I don't know his name.

Q. Now did anything happen after you left Boston? Did anything happen after the ship left Boston?

A. Not with the exception of Buckless failing to turn out on deck that time. We were sailing then. We had already left the dock.

Q. Did he turn out for duty the following day?

A. The next day he did.

Q. Your next port was Cat Island?

A. Yes, sir. As I say, we were supposed to go to Corpus [1747] Christi and we changed for Cat Island.

Q. What happened at Cat Island?

A. You can't get ashore at Cat Island.

Q. What was the next stop?

A. Either Port Neches or Port Arthur. I can't recall which port. In fact, I know it was Port Neches. I know that now. The tug came alongside and said we had orders to go to Spain.

Q. Did the captain leave the ship?

(Testimony of Charles L. Olson.)

A. The captain went ashore and I was in charge of the ship.

Q. When did you leave?

A. After we got in Port Neches, after I was relieved by Mr. Tranberg.

Mr. Van Dusen: That is all.

Cross Examination

Q. (By Mr. Martin) Mr. Olson, you say the boat set sail from Boston on December 29, 1937?

A. On the morning of December 29, 1937, if I am not mistaken and I am pretty sure I am right.

Q. Now did you say that you didn't see Mr. Buckless all of that day up until you called for him in the late afternoon?

A. I didn't say that, no.

Q. What did you say? [1748]

A. I said that he failed to turn to on deck until—in fact, he didn't turn to on deck at all. He failed to turn to on deck. I saw him in the morning and that evening when I went on watch was the next time I really saw him.

Q. When did you see him that morning?

A. That was some time after 8:00 o'clock.

Q. Some time after 8:00 o'clock?

A. Yes, sir, after 8:00 o'clock.

Q. What time did the boat sail that morning?

A. Well, he wasn't on the forecastle head when she sailed that morning.

Q. I beg your pardon?

(Testimony of Charles L. Olson.)

A. Well, he wasn't on his station when she sailed that morning and I think we sailed around 6:00 o'clock in the morning; 7:00 o'clock; I don't remember just the exact hour.

Q. Where was Mr. Buckless when the ship set sail that morning?

A. I don't know. He was aboard some place. The crew is checked up as a rule. As a rule at sailing time the crew is checked up. Who checked them, I don't know. He was aboard the ship, but he wasn't on deck.

Q. Who turned the men to?

A. Most of them turned to by their own accord. Naturally they were all called at that time in the morning, sailing time in the morning. [1749]

Q. Were you in the court room while Mr. Hopper was testifying?

A. Yes, sir, the latter part of his testimony.

Q. Did you hear Mr. Hopper testify that on that morning in Boston he was standing at the after end of the boat and that Buckless was standing at the fore end of the boat with the mate?

A. No, sir, I haven't heard that at all.

Q. I beg your pardon?

A. I haven't heard that at all.

Trial Examiner Myers: Did you hear me ask the question?

A. I didn't hear you ask the question. The only thing I remember him telling about was the boatswain being around the gangway and taking in the

(Testimony of Charles L. Olson.)

gangway. That is the part of the testimony I heard.

Trial Examiner Myers: Well, he testified that after Buckless left the gangway he stood next to you.

A. He couldn't have stood by me unless I am terribly mistaken, and I am pretty sure I am not.

Trial Examiner Myers: Well, he said it was the 28th and you say it was the 29th.

A. Sailing time was the 29th. Docking time; that is, arrival time in President Roads was on the 27th, the night time of the 27th, 10:00 or 11:00 o'clock.

Trial Examiner Myers: I just wanted to tell you what [1750] he testified to. I don't know what the facts are.

A. The 27th is when we went into Boston. The 29th is sailing time. I believe he is talking about sailing time at present.

Trial Examiner Myers: Oh, he meant sailing time, because he said Buckless had gone ashore and came back in a drunken condition. I mean under the influence of liquor.

Q. (By Mr. Martin) Approximately what time that morning that the boat sailed from Boston did you see Mr. Buckless for the first time?

A. That is what I say, after 8:00 o'clock in the morning.

Q. After 8:00?

A. After 8:00 o'clock in the morning.

(Testimony of Charles L. Olson.)

Q. After the boat had sailed?

A. Yes, sir, she was on her way down to sea at the time. She was probably in the harbor.

Q. And when previously to that had you last seen Mr. Buckless?

A. The noon before that when I turned them all—that is, when I let them all go for the afternoon.

Q. Now you have testified that you were on the boat just that one trip? A. One trip.

Q. And you say that when you came aboard Mr. Buckless wasn't too sober when you boarded the ship at Houston?

A. I say after I came aboard; after I relieved Mr. Tranberg. [1751]

Q. And then you say again in Boston Mr. Buckless, to your knowledge, was showing some evidences of having done some drinking?

A. Leaving Boston.

Q. Now you were first mate at this time?

A. Yes, sir.

Q. And you had the power, did you, to fire a man? A. Yes, sir.

Q. Why didn't you fire Mr. Buckless?

A. We had already left the dock and we were at sea.

Q. Why didn't you fire him when you got to Port Arthur or Port Neches?

A. I was relieved. That was turned over to my relief.

(Testimony of Charles L. Olson.)

Q. Did you recommend to the captain that he fire him for drunkenness?

A. I didn't recommend anything.

Q. You didn't? A. No.

Q. Didn't you consider Mr. Buckless a great danger to the safety of the ship if he were a drunkard?

A. As I told you, I didn't see him until 5:00 o'clock in the evening and I told you at that time he was in an intoxicated condition, but he was in his bedroom slippers, washed up and cleaned up. I thought then he had the intention of staying straight and straightening up and getting a night's [1752] sleep and turning to the next morning. He was no danger at that time, no. [1752-A]

Q. Mr. Olson, when on the twenty-ninth of December, 1937, were you in your bunk?

A. December 29? That is sailing day. I probably took a nap in the afternoon. At least I was in my room. Whether I was napping or what I was doing. Making out my own personal reports and things, I was probably in my room all afternoon.

Q. After 12:00 o'clock?

A. Yes, sir, after dinner.

Q. Now, if you were in your room would you know or would you not know whether Mr. Buckless was on deck during those hours?

A. No, I wouldn't know.

Q. You wouldn't know that? A. No.

(Testimony of Charles L. Olson.)

Q. Now, on the morning of sailing day between 7:00 when you said the boat left the dock and 12:00 noon where were you stationed as first mate on the boat? A. From one end to another.

Q. All over? A. Yes, sir.

Q. Were you on the bridge some?

A. I was on the forecastle head most of the time until we got clear, away from all docks and obstructions in the canal and all that, standing by the anchor.

Q. Now, while you were up there, which you say was most of the time, were you in position to be able to see whether Mr. [1753] Buckless was on deck somewhere back aft perhaps?

A. I wasn't in position to see it, no.

Q. Then how do you——

A. (Interrupting) All I can do is give a man his orders. If he is not there, why I can't do anything until later on when I can check up on it. Actually I didn't see him.

Q. Can you be certain therefore that Mr. Buckless was not on deck performing his duties at that time?

A. From the condition of the ship and the work done he wasn't there. Mr. Buckless in his sober days is a fine boatswain, a fine seaman.

Q. He is a good worker?

A. Yes, sir, he will get things done.

Q. His crew responds to him, do they?

A. Yes, sir.

(Testimony of Charles L. Olson.)

Q. He gets them to go?

A. Yes, sir, he gets them to go. He will make me satisfied anyhow.

Q. And does he make them click even when he has had a drink or two?

A. Well, he is no slave driver or anything like that, but he will get the work done.

Q. I understand. They respond to him?

A. Yes.

Q. Whatever the reason? [1754] A. Yes.

Q. They like to work for him? A. Yes, sir.

Q. He gets them to work? A. Yes, sir.

Q. He produces?

A. Well, I told you he is no slave driver. The work satisfies me when he is in a sober condition. I am the one who has to be satisfied in that case.

Q. On December 29, 1937, who else to your knowledge showed some evidences of having done some drinking?

A. There is one sailor. I can't recall his name.

Q. Just one?

A. Just one. I can't recall his name, and the reason I remember that in particular is because the captain and the chief engineer and myself were standing in the pantry amidships when this sailor came amidships for coffee and he had two of the prettiest black eyes I have ever seen on a man. Later I found out it happened on board ship. I didn't know it at that time. We didn't say a word to him. He came in for coffee. He was on the

(Testimony of Charles L. Olson.)

8:00 to 12:00 watch and I refused to let him go to work that night; to show you the condition the man was in.

Q. After this occasion in Boston when you became familiar with Mr. Buckless, did you warn him to cease this drinking?

A. I didn't have occasion to warn him. [1755]

Q. To your knowledge did Captain Swanson warn him?

A. He didn't have occasion to warn him until late that evening after sailing from Boston.

Q. To your knowledge did Captain Swanson warn him?

A. To my absolute knowledge I couldn't say.

Q. Did Captain Swanson say to you after that "Well, this Buckless fellow, I think we will have to fire him for drunkenness" or anything like that?

A. No.

Q. No references like that?

A. I would have been the one to fire him.

Q. But you didn't? A. No.

Q. Now, at the conclusion of that Boston trip you say you got off the boat at Port Arthur?

A. Yes.

Q. And the boat then took the trip to Spain?

A. I don't know where she went then.

Q. At the conclusion of that trip did all the men on the vessel receive certificates of discharge?

A. A man can receive a certificate of discharge at any time they leave the vessel; that is, after they

(Testimony of Charles L. Olson.)

get their pay and leave it legally they are entitled to a certificate of discharge. Whether they got it at that time I don't know.

Q. You are not certain that the Spanish trip followed this trip immediately? [1756] A. No.

Q. Then you are not positive that the men did receive certificates of discharge after this series of coastwise trips?

A. No. If they make application for a certificate of discharge they will get it. There has never been a man refused yet that I know of.

Q. Mate, will you tell us about the feeling on the "Nevada" while you were aboard between the captain and the men concerning the union?

A. Feeling? There was no feeling. There was no union word or activity of any kind on that ship as long as I was on it. Not a sign of it in no way in talk and actions that I know of.

Q. How do you know?

A. I am part of the crew. I am one of them has got to listen to it, just like the rest of them do.

Q. But you were not at all places at all times on the boat, were you?

A. Naturally, I couldn't be. If they did anything like that they might do it on the street; any place.

Q. You say you are a member of the crew. Are you a member of the unlicensed or licensed personnel?

(Testimony of Charles L. Olson.)

A. I am a member of the licensed crew. I am a licensed officer.

Mr. Martin: That is all. [1757]

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Olson, as chief mate do you give a man a chance when he has been intoxicated once or twice?

A. I don't give him a chance as a rule. I left his chance with Tranberg. I put it in his hands, in other words. I don't see why I should give a man a chance on a tanker in an intoxicated condition because the lives of all the men and the ship and cargo are in danger.

Q. Why did you give Buckless another chance in Port Arthur?

A. As I say, I was relieved.

Q. You thought that was Tranberg's job?

A. Yes, sir.

Q. Did you report that to Tranberg?

A. Not that specific case I didn't.

Q. Did you say anything about Buckless?

A. No, sir, I didn't.

Q. You were relieving Mr. Tranberg for that trip?

A. For the trip, yes, sir.

Q. Did you mention these incidents to the captain?

A. Not that I specifically recall.

Q. Did you discuss it with the captain?

A. How is that?

Q. Did you discuss it with the captain?

(Testimony of Charles L. Olson.)

A. I might have.

Q. Now you testified that when Mr. Buckless was sober he was [1758] a good boatswain?

A. Yes, sir.

Q. Was he a good boatswain when he was not sober?

A. Naturally I don't think any man is.

Q. Well, was he or was he not?

A. No, sir, he couldn't have been. He wasn't, in other words.

Mr. Van Dusen: That is all.

Recross Examination

Q. (By Mr. Martin) Mr. Olson, do you drink?

A. I do.

Q. Aboard ship? A. No, sir.

Q. Did you ever drink before you get aboard a ship?

A. I have on lots of occasions.

Q. On lots of occasions? A. Yes, sir.

Q. A customary thing, is it?

A. I am normal.

Q. So is Mr. Buckless, isn't he?

A. Well, I imagine he is.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Olson, did you ever drink while on duty? [1759] A. No.

Mr. Van Dusen: That is all.

(Testimony of Charles L. Olson.)

Trial Examiner Myers: All right. You are excused.

(Witness excused.)

Trial Examiner Myers: We will take a short recess.

(Short recess.)

HERMAN HOPPER

recalled as a witness by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Redirect Examination

Q. (By Mr. Van Dusen) Mr. Hopper, do you recall about when Mr. Buckless left the ship?

A. April 18.

Q. Where were you at that time?

A. Well, when he left I was assisting the captain to pay off in the salon.

Q. Did Mr. Buckless come in to be paid off?

A. Yes.

Q. Please tell me what Mr. Buckless said to the captain and what the captain said to Mr. Buckless at that time.

A. Well, I don't recall Mr. Buckless saying anything to the captain.

Q. What did the captain say to him?

A. The captain said: "I don't want you any

(Testimony of Herman Hopper.)

more, Boats. You are drunk and bringing booze aboard the ship." That is the [1760] only words I heard at the time.

Q. Did he then pay him off?

A. Then he paid him off.

Q. Where did the captain go then?

A. Well, the captain finished paying the crew off. I was with him while the captain paid the whole crew off. After that I imagine Mr. Buckless went into the captain's quarters to get his discharge, because the captain usually did that.

Q. Did Buckless say anything else?

A. I didn't hear Buckless say anything.

Mr. Van Dusen: That is all.

Recross Examination

Q. (By Mr. Martin) Are you certain, Mr. Hopper, you have told us everything that you heard said there?

A. That is all I remember hearing, yes, sir.

Q. Were you in there all the time?

A. Well, all the crew were being paid off.

Q. Were you there all the time Buckless was paid off?

A. Well, while he was getting his money, yes. After paying the crew off the captain usually gave them the discharges in his own room, see?

Mr. Martin: That is all.

Trial Examiner Myers: Were you here yesterday when Captain Swanson was testifying?

(Testimony of Herman Hopper.)

A. Yes, sir. [1761]

Trial Examiner Myers: Did you hear Captain Swanson testify as to the incident that occurred with Buckless at the time he paid him off?

A. Yes, sir.

Trial Examiner Myers: Did you hear the captain say that Buckless said he fired him for union activities?

A. I heard the captain's testimony.

Trial Examiner Myers: You don't remember Buckless saying that?

A. As I say, I was there while the captain was paying him; while he was signing the pay roll.

Trial Examiner Myers: All right.

(Witness excused.) [1762]

ELDER GILBERT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Will you give your name to the reporter?

A. Elder Gilbert, 3023 Sixth Street, Port Arthur, Texas.

Q. (By Mr. Van Dusen) Captain Gilbert, are you now employed by The Texas Company?

(Testimony of Elder Gilbert.)

A. I am.

Q. In what capacity? A. Master.

Q. Of the "Roanoke."

A. SS "Roanoke," yes.

Q. How long have you been captain of the "Roanoke," Captain Gilbert?

A. Nearly ten years.

Q. Continuously?

A. Well, outside of a couple of months that I had the SS "Harvester." [1841]

Q. Now, Captain, during the time that Mr. Lortie was on this ship, did you know of any union meetings aboard that ship?

A. Well, personally, I never observed a meeting on there. I never did see them holding a meeting. Of course naturally things cannot go on like that around a ship without me hearing it, but I never did see them holding a meeting aboard.

Q. Did you hear of any union meetings on board? [1854] A. Yes.

Q. Well, tell me about that, Captain Gilbert.

A. Well, as I was saying, naturally when a meeting is held aboard I am bound to hear about it one way or the other. And then in looking over the ship occasionally and passing through the petty officers' mess the minutes of the meeting, date and so forth, would be tacked upon the bulkhead, and naturally I would throw my eye on it and notice what was going on, thinking probably there was something I might be able to straighten out on the ship, you see.

(Testimony of Elder Gilbert.)

Q. Did you ever interfere with any of those meetings? A. No, absolutely not.

Q. Did you ever discharge a man because he attended one of those meetings?

A. No, I never did.

Q. Do you know who of that crew attended those meetings?

A. No, I couldn't swear to that, really.

Q. Now, Captain, is it customary for you and your officers to go down very often to the crew's quarters?

A. Well, so far as the officers, the only one that really makes any inspection is the chief mate.

Q. How about yourself? A. And myself.

Q. That is an inspection trip?

A. That is, I pass through the ship and see how things are [1855] kept up, naturally.

Q. How often do you do that?

A. Maybe in a trip north, a week at sea, once or twice. It all depends.

Q. Did you ever go down there for the purpose of talking to the crew? A. No.

Mr. Martin: Mr. Examiner, I object to these leading questions, especially that one.

Mr. Van Dusen: That is not a leading question.

Trial Examiner Myers: I will overrule the objection. You may answer.

A. Generally my inspections around are made in the morning, say around 10:00 o'clock. I generally take a walk around, have a cup of coffee, and

(Testimony of Elder Gilbert.)

go forward to my quarters. Naturally at that time most of the crew that are supposed to be out working are on deck, and the others are off, and probably are sleeping.

Q. Captain, do members of your crew at any time come to you with grievances or complaints?

A. No, they never have.

Q. Do any member of your crew ever come to you with some little dispute, like overtime or something that they want settled?

A. Well, they haven't come to me directly. They have to [1856] Mr. Carpenter, on a couple of occasions, but it was straightened out all right without any trouble. [1857]

Q. Do you listen to them when they come to you?

A. Well, they haven't come to me. Of course, they discuss it with the mate, and generally discuss it with the boatswain, but up to now everything has been satisfactory in regard to overtime.

Q. Captain, is it the policy of your ship to listen to grievances and endeavor to dispose of them?

A. Why certainly, if they were to come up to me. [1858]

Q. Is it your practice to give your men whiskey?

A. Well, it has been my practice. There has been occasions past that I have noticed a man on deck in the morning probably with a little hang-over; in other words, rum sick; and I have given him a drink to straighten him out. [1859]

(Testimony of Elder Gilbert.)

Cross Examination

Q. And that you have been a captain for ten years?

A. Well, it is going on eleven years actually. I *have* captain of the "Roanoke", outside of a few months, it will be ten years now.

Q. Now is it or is it not generally true that seamen generally do a lot of drinking?

A. Well, as a rule they do.

Q. How many times in the course of your twenty-two years at sea have you known of a man's being fired for being drunk?

A. Well, that happens on a number of occasions of course. [1874]

Q. About how many?

A. Well, really I couldn't say.

Q. How many did you ever fire for being drunk?

A. Well, to tell the truth, I fire very few unless it is absolutely necessary.

Q. For the safety of the ship you mean?

A. Sir?

Q. For the safety of the ship?

A. Well, for the safety of the ship and of course it is a bad impression for the rest of the crew, you understand, but how many, I can't tell you that.

Q. Did you consider Mr. Lortie's and Mr. Helton's cases of sufficient importance to fire them for drunkenness?

A. Well, what influenced me more than any-

(Testimony of Elder Gilbert.)

thing else there was the disturbance aboard the ship. That is something really that I really don't tolerate, is a disturbance aboard the ship. At least I try not to have it.

Q. Did you inquire into the circumstances of that disturbance?

A. I inquired in this way: The chief mate, who was in charge naturally of the ship—when I was ashore, Mr. Carpenter was in charge of the ship; responsible to me; and he told me what happened about the rowing in the galley and that is what I acted upon.

Q. And did you make any other investigation of your own accord? [1875]

A. No. Just I acted upon what the chief officer told me. [1876]

A. Yes, the disturbance aboard. That is something I don't tolerate; not if I know it.

So far as drinking within reason, of course naturally you more or less have to expect it, especially when you are in port only a few hours, but when it comes to a disturbance; in other words, a row on the ship; well, that I won't stand for. [1878]

Q. Well, generally you don't fire men for being drunk then?

A. Well, within reason, providing a man does anywhere near what is right—you understand what I mean—and don't really lay down, as we say, on the job too much and does it within reason and does right, why I give him a pretty good break.

(Testimony of Elder Gilbert.)

Q. Is that the policy of most sea captains?

A. Well, that I can't say. That is my own personal way of handling such things. [1879]

Redirect Examination

Q. After a man is paid off does he sign new articles?

A. He signs them for every voyage, so that everybody will understand where the ship is going. And a copy of those articles, that is, omitting the names, and stating the voyage, I post on the bulkhead in the petty officers' mess.

Q. When he is paid off does that terminate the articles he signs?

A. So far as the articles, but the man is still employed on the ship. He is not leaving.

Q. If you give him a certificate of discharge is he terminated?

A. Yes, if he leaves the ship and requests a discharge I give him a certificate of discharge. Then of course I have to advise Washington, the Bureau of Navigation, forms that we have, I can't exactly remember, stating the men are leaving the ship at that port, and the men that are signed on.

Q. When a new trip starts does he sign new articles?

A. And then when a new trip starts they sign all over again. [1886]

Q. It is very unusual for Meyer to come aboard the ship, isn't it.

(Testimony of Elder Gilbert.)

A. No. He comes aboard every time.

Q. As you come in?

A. Yes, as we tie up he generally comes aboard and finds out, you understand, what replacements we need for crew, and looks after that.

Q. Did the mess boy come aboard the boat?

A. I didn't see him, no. I don't know whether he came on board or not. I really didn't see the boy, because I left the bridge and went on down to my office.

Q. Now I don't know whether I heard you right or not. Did you testify that you saw some meetings of the crew?

A. I testified that I had never seen one on the ship at any time.

Q. But you heard about it?

A. Naturally I will hear about it and the minutes of the meeting would be pinned up, tacked up on the bulkhead, and naturally I couldn't help seeing them as I looked the ship over. [1891]

CLARENCE BUCKLESS

a witness recalled for and on behalf of the National Labor [1894] Relations Board, having been previously sworn testified further as follows:

Direct Examination

Q. (By Mr. Martin) Mr. Buckless, have you ever been fired from a boat for drunkenness?

(Testimony of Clarence Buckless.)

A. Well, they claim that on the "Nevada" and "Washington". No, they claim it on the "Nevada". The "Washington", it was for missing a watch.

Q. Any other vessels? A. No, sir.

Q. Now, Mr. Buckless, can you tell me about that watch that was missed while you were on the "Washington"? A. Yes, sir.

Q. Now, will you please try to begin when the boat docked at Claymont, Delaware, and tell us as nearly as you can your movements?

A. We arrived at Claymont, Delaware, Sunday morning, the third, at 5:00 o'clock.

Q. July 3?

A. Yes, sir, 1938, at 5:00 o'clock. And we tied up to the dock. At 8:00 o'clock I ate breakfast, and changed clothes and went ashore. I went up to a little town called Marcus Hook, Pennsylvania.

Q. Excuse me, Mr. Buckless. Did you go there the first day?

A. Yes, sir. I went up to Chester, Pennsylvania, through Marcus Hook. You have to go through Marcus Hook to Chester. [1895] I sent a telegram, and came back to Marcus Hook and bought some newspapers and toilet articles, and came back aboard the ship at 11:00 o'clock, or thereabouts.

Q. Was that 11:00 in the morning?

A. 11:00 in the morning, yes, sir.

Q. Then how long were you off the vessel that morning?

A. I should say two hours; an hour and a half

(Testimony of Clarence Buckless.)

to two hours. I had dinner at 11:30, and went on watch at 12:00. I stood my regular 12:00 to 4:00 watch as quartermaster that afternoon.

Q. Doing what?

A. Watching the lines, turning valves as necessary for the mate. We concluded that day's work at 4:00 o'clock that afternoon. The following day—

Q. Mr. Buckless, excuse me just a minute. Had you or had you not stood the morning watch from 12:00 midnight to 4:00 a. m. the morning before you docked at 5:00 a. m.?

A. Yes. I stood that watch steering the boat up the river.

Q. Into the harbor? A. Yes, sir.

Q. Then you went ashore, as you have related?

A. Yes, sir, after we had docked.

Q. And then you came back and stood the 12:00 to 4:00 afternoon watch, is that correct?

A. Yes, sir. [1896]

Q. Then will you go ahead after 4:00 o'clock that Sunday.

A. I went back to my room and got some clean clothes and went back and took a bath. I had supper at 5:00 o'clock, and then I stayed in my room that night. I wrote a couple of letters; stayed aboard that night.

Q. Yes.

A. And at 12:00 o'clock that night I was called twenty minutes to twelve to go on watch again,

(Testimony of Clarence Buckless.)

which I did, and stood the 12:00 to 4:00 watch that morning of the fourth.

Q. Approximately how much sleep did you have before you stood your 12:00 to 4:00 watch?

A. I should say four hours. At 4:00 the next morning I went back to my room and went to bed and slept until eight. At 8:00 o'clock I got up and had breakfast, and went back to bed again. I was called to go on watch again at 11:20.

Q. Is this on the fourth?

A. On the fourth day of July.

Q. This is the fourth of July?

A. Yes, sir, 1938.

Q. Monday?

A. Yes, sir. I was called, as I say at 11:20 to go on watch. I had dinner at 11:30, and went on watch at 12:00, the regular routine, watching the lines and taking care of cargo and valves. There was not much doing that day, as the tanks they were pumping out of were about half full, and so I didn't turn [1897] many valves that day. I didn't do anything hardly. That watch was ended at 4:00 o'clock that evening. The 4:00 to 8:00 took over at 4:00 o'clock, and I went back to the fore-castle. I spoke to a man about going over to see the fireworks that evening. He said he would like to go, and so we decided to go to the fireworks there in Claymont. So I spoke to the quartermaster on the 8:00 to 12:00, and asked him if he would stand my watch, if I didn't come back, and he said he would.

(Testimony of Clarence Buckless.)

Q. What was his name?

A. Earnest—it is a rather hard name to remember.

Q. Zehreel?

A. Zehreel. That evening I went ashore and saw the fireworks, and returned to the ship about 11:00 o'clock that evening.

Q. Did you have anything to drink that evening?

A. No, sir. I went to bed. I was called out at twenty minutes to 12:00, 11:40.

Q. Who called you?

A. The 8:00 to 12:00, Zehreel. He says: "How do you feel?"

And I says: "Pretty tired."

And I says: "Are you tired?"

And he said: "No."

And I said: "Would you stand an hour or so of my watch?"

And he said he would. [1898]

And I said: "I will pay you for it, or else give it back to you in time back, that is, change watches."

So I went back to sleep, and he never called me. He stood the whole watch. So when we came back to Port Arthur I gave him \$4.00 for standing the watch, at the rate of a dollar an hour. That was after I found out I was leaving the ship, after they had fired me. I couldn't go away and leave the man without standing watch for him, so I paid him a dollar an hour for standing the watch.

(Testimony of Clarence Buckless.)

Q. Now, how about the next morning?

A. The next morning, well, I got up at 8:00 o'clock and had breakfast. That was the day we sailed. That was on the fifth.

Q. Did you stand your 8:00 to 12:00?

A. I was on the 12:00 to 4:00.

Q. Excuse me.

A. Yes, I went on watch at 12:00 noon the next day and stood my watch.

Q. Did anybody ever speak to you about missing this watch? A. No, sir.

Q. Any officer of the boat? A. No, sir.

Q. Was it customary, if you are able to tell us, was it customary or not on that boat to ask other people to stand your watch without getting permission from one of the officers? [1899]

A. It was customary to have a man in the same capacity as your own, such as quartermaster. If I had asked an ordinary seaman that would not be right. But as long I asked a quartermaster, standing as quartermaster, as the mates do, they change watches just the same, and it is customary aboard all ships as long as I have been going to sea.

Q. Now, during that entire week end did you have any beer to drink? A. No, sir.

Q. During that entire week end did you have any whiskey to drink? A. No, sir.

Q. Did you have any malted milk to drink?

A. I had a chocolate malted milk.

(Testimony of Clarence Buckless.)

Q. You did? A. Yes, sir.

Q. Mr. Buckless, do you remember what time of day the "Washington" docked on the day that you were fired?

A. It docked in the morning, on or about July 18. [1900]

Q. Who was it who told you you were discharged?

A. The chief mate; the chief officer.

Q. Can you tell us about what time that was?

A. That was on or about 3:00 o'clock in the afternoon of July 18.

Q. Did you sign your certificate of discharge in the presence of the captain?

A. Yes, sir.

Q. Mr. Buckless, while the "Nevada" was in Bilbao, Spain, do you remember coming aboard her from a pilot boat?

A. Well, it was a small boat that the company, I believe, had hired to bring us aboard, as the ship was shifting back and forth and surging and they couldn't hold her to the dock; couldn't get out any gangways.

Q. Now who was with you in that boat when you came aboard?

A. The first pumpman, Lee Holmes, the third mate Roger Kelly, and myself.

Q. Just the three of you?

A. And the fellow that was doing the rowing, some little Spanish fellow. We were the only three off the "Nevada".

(Testimony of Clarence Buckless.)

Q. Now how did you happen to use the little boat that morning to get aboard the big boat?

A. Well, as I say, they had no gangway out. We had no way of getting aboard.

Q. Why? [1901]

A. Well, I could have—in fact, I asked the mate or the quartermaster to throw me a runner that was made fast—well, it went up to the derrick or the boom and was made fast to the mast at one end and the other end could swing out to the dock and I could catch that and swing aboard and the mate told me I had better not do that; that I might get hurt.

Q. Was it the captain or the mate who told you?

A. It was the mate. The captain was in hearing distance.

Q. Was the weather bad that day?

A. The weather wasn't bad. It was raining. There was no wind, though.

Q. Was the water rough?

A. Well, there is kind of a current that they have there and it was shifting the ship back and forth.

Q. Was it kind of difficult to hold the ship to the dock?

A. Yes, sir, very difficult; breaking lines and chocks.

Q. Is that the reason why it was necessary to use the little boat? A. Yes, sir.

Q. Well, now, what time were you supposed to report for duty that morning?

(Testimony of Clarence Buckless.)

A. 8:00 o'clock.

Q. Were you or were you not on the dock and ready for duty that morning at 8:00 o'clock?

A. I was. [1902]

Q. Approximately what time that morning were you on the dock?

A. I should say ten minutes to 8:00, on or about.

Q. And was it then that you first discovered that it would be impossible to board the boat immediately?

A. Yes, sir.

Q. Who was with you then?

A. The first pumpman, Lee Holmes, and the third mate, Roger Kelly.

Q. Now when you made that discovery that you couldn't get on the boat immediately what did you do?

A. We went in a little warehouse that they have there for shelter.

Q. All three of you? A. Yes, sir.

Q. Did you go any place else?

A. Not right at that time.

Q. Did you go any place else than that little warehouse before you came aboard the boat?

A. Yes, sir.

Q. Where was that?

A. That was at just before 8:00 o'clock. We stopped at a bar room.

Q. Did you stop at a bar room on the way to the boat?

A. Yes, sir. [1903]

Q. Who did?

(Testimony of Clarence Buckless.)

A. The three of us, Mr. Kelly, Mr. Holmes and myself.

Q. And what did you do in the bar room?

A. Bought some drinks.

Q. Drinks from the bar? A. Yes, sir.

Q. Do you know what you were drinking?

A. No, sir. I knew it was whiskey, but I didn't know the name of it.

Q. It was whiskey? A. Yes, sir.

Q. I wish you would try to remember as well as you can about how many drinks you had?

A. Perhaps four or five.

Q. How many did Mr. Kelly have?

A. I think we drank about the same.

Q. And how many did Mr. Holmes have?

A. About the same.

Q. Then after that did you say you went to the dock? A. Yes, sir.

Q. And then after that, some time shortly thereafter, did you get in the little pilot boat?

A. No, it was, I should say, 10:00 to 10:30—about 10:30—before we got into the boat.

Q. Can you tell us why it took you so long to get aboard [1904] the boat?

A. Yes, sir. They had no way available to get out aboard until they made preparations for this boat. It took them, you know, a little while; a couple of hours, you see, before they could get in touch with this fellow to get the boat down there to bring us aboard.

(Testimony of Clarence Buckless.)

Q. Now were you on the dock waiting to go aboard the big boat when the little boat first got to the dock to take you up?

A. I believe they called us from the—yes, they called us from the warehouse, the shed or shelter.

Q. You had been there for some time?

A. Yes, sir.

Q. How long?

A. Perhaps an hour or an hour and a half. It would stop raining once in a while and we would come out and it would rain a little harder and we would go back into the shelter again.

Q. Now how did you get from the little boat into the big boat?

A. By means of a pilot ladder hanging over the side of the ship; made fast to the ship, hanging over the side.

Q. Who went up first?

A. I believe Mr. Kelly.

Q. Who went up second? [1905]

A. Mr. Holmes.

Q. Who went up third?

A. Mr. Buckless.

Q. Was anybody else there?

A. No, there was just the man in the boat.

Q. And then did anybody go down the pilot ladder? A. Yes.

Q. Who went down?

A. Several seamen; firemen; you know, sailors.

Q. Do you remember the names of any of them?

(Testimony of Clarence Buckless.)

A. I remember one by the name of Tibbett.

Q. Why do you remember him?

A. He asked me for some money.

Q. He asked you for some money?

A. Yes, sir.

Q. Did you owe him some money?

A. No, sir.

Q. Was he borrowing it?

A. He was borrowing it. [1906]

Q. How much?

A. Well, I told him all I had was a ten dollar bill and I wanted to go ashore that night. He wanted to know what I wanted. I said I was going to go out and have a few beers and a whiskey if I desired it or anything I wanted.

“Well,” he said, “I will bring you back some whisky.”

So I said: “All right.” And gave him the ten dollar bill. So he went ashore and he bought this whisky or supposed to be whisky and he tried to get it aboard the ship, but they were watching pretty close and they wouldn’t let him come aboard in the boat. He came around in the boat once. They wouldn’t let him aboard with it, so he goes back in the boat again.

Q. The little boat?

A. Yes. He goes around and goes on the dock and it seems that some sailor of the crew had threw him a line——

(Testimony of Clarence Buckless.)

Q. (Interrupting) It wasn't you?

A. No, sir, I was on deck working.

Q. What time was this?

A. This was in the afternoon of the same day and this fellow threw him a line and he had tied this whisky or so-called whisky on this line. In fact it was in a bag. They tied a line to the bag, to the center of the line, so that one man would hold the line on the dock and the other man would bring it aboard, as I understand. [1907]

Q. Did you see this happen?

A. No, I didn't. I didn't see it at all and they got it aboard the ship and they have a Spanish fellow aboard there to watch out for anything coming aboard. So he gets this fellow with the whisky and takes it away from him and he takes it up to the captain's room. So we decided the whisky was gone. The following morning——

Q. Now just a minute, Mr. Buckless. Now when you came aboard the vessel that morning were you drunk?

A. No, sir. I had been drinking. I turned to.

Q. Did you work?

A. Yes, sir, I worked all that day.

Q. From when until when?

A. From the time I came aboard until the mate knocked me off that evening.

Q. Until what time?

A. Until the mate knocked me off. I don't know what time it was. It might have been 4:00, 4:30.

(Testimony of Clarence Buckless.)

We had a few lines to splice that day, I know, on account of breaking them the night before. They had quite a lot of trouble with the ship surging. We were getting new lines out of the hold.

Q. Was anything said to you that day about drinking or being drunk? A. No, sir.

Q. By Mr. Tranberg or Captain Swanson?

[1908]

A. No, sir.

Q. Now what watch does the third mate stand in port?

A. Well, they have it arranged between themselves now. The third mate stands the 8:00 to 12:00 watch.

Q. The 8:00 to 12:00?

A. Yes, sir. But they can arrange it, I imagine, between them if they desire and stand any watch.

Q. Now do you know what watch Mr. Kelly stood that morning or that day?

A. Well, as he came aboard with me, which was at 10:30, I don't believe he stood any of that watch.

Q. He didn't stand that watch?

A. No, I think the mate took charge of the deck that day.

Q. Was Mr. Kelly indisposed?

A. Well, I wouldn't say. I couldn't tell whether he was or was not.

Q. Was he drunk?

A. He had been drinking.

(Testimony of Clarence Buckless.)

Q. Can you remember when you next saw him on deck anywhere?

A. I believe I seen him on deck about 4:00 o'clock that evening or 5:00 o'clock. I believe he relieved the mate to eat that evening.

Q. Had you been on deck all day?

A. Yes, sir.

Q. In and around? [1909] A. Yes, sir.

Q. And you hadn't seen him anywhere?

A. No, sir.

Q. Do you have reason to know where he was during the day?

A. No, I didn't pay no attention to him.

Q. Now, Mr. Holmes, what is Mr. Holmes' job?

A. First pumpman.

Q. And what is a first pumpman's job in port?

A. To take care of the pumps, keep them greased and running, see that the steam pressure is accurate, whatever the order; 80 pounds of steam or 180 or whatever they want to carry; he is the man, I believe, to look after that; and to assist with the valves, watch the tanks.

Q. What hours does he work in port?

A. Eight hours. They arrange that too. You see there are two pumpmen and they arrange that themselves. One will work eight hours, no matter what time we might be in port. It might be from 4:00 in the afternoon to 12:00 at night and the other fellow from 12:00 at night to 8:00 the next morning and they rotate like that.

(Testimony of Clarence Buckless.)

Q. Now do you know whether Mr. Holmes was supposed to be on duty that day?

A. I really don't know whether he was supposed to be or not.

Q. Was he on duty that day? A. No, sir.
[1910]

Q. Where was he?

A. He was in his bunk most of the day soon after he came aboard.

Q. Did you see Mr. Holmes in his bunk that day? A. Yes, sir.

Q. Was he drunk?

A. I believe he was pretty well under the influence of liquor.

Q. Mr. Buckless, do you remember where the mate was standing when you came up to the top of that pilot ladder that morning?

A. No, I don't exactly know. He was there on deck. I remember seeing him.

Q. He was?

A. Yes, sir. I don't know just where—I don't remember just where he was standing.

Q. Was it close to the top of the pilot ladder?

A. Well, it wasn't very far from it, I don't believe.

Q. Do you remember where the captain was standing when you came to the top of the pilot ladder that day?

A. No, I never noticed the captain at all.

Q. You didn't see him right then? A. No.

(Testimony of Clarence Buckless.)

Q. Now you started to say something about what happened the next morning after the liquor came aboard that night. [1911] A. Yes.

Q. Tell us about that.

A. Well, the next morning I turned to at 8:00 o'clock and about 9:00, I should say, there was practically all the sailors—that is, the sailors who were on watch, including myself, was taking in back spring, a line they call the back spring. Well, we finished. The captain was on the salon deck and he said to all of us: "Whose whisky was that that he had taken the night before?"

So I told him it was mine.

Q. Were you kidding him?

A. No, sir. Well, I really didn't know whether it was all mine or not, but I knew that he said I had some whisky in that bag.

Q. You mean you felt like you had an investment?

A. Yes, sir. Well, he said: "Are you sure it is yours?"

I said: "Yes, sir."

"Well," he says, "I am going to give you a quart now, but don't get drunk." He said: "Use it as it should be used."

I said: "All right, sir."

So he hands the quart of liquor to the chief mate. The chief mate handed it to me. I took it back and put it in my room. At coffee time, which is 10:00 o'clock, from 10:00 to 10:20, I broke out the quart of

(Testimony of Clarence Buckless.)

so-called Nigger rum— [1912] Nigarita rum, I believe the name of it was—and give all the boys a drink in the mess room. There was perhaps eight or ten in there, firemen, sailors and so on. Some put it in their coffees and some drank it straight. Well, between the bunch of them they killed the quart pretty quick. Well, that was the last of that.

Q. Did you have any?

A. I did. I had a coffee royal.

That evening I asked the captain for another one, which he gave me. I took it back to my room and discovered it was sweet cider. The name on it was Champaign Cider. “Champaign” means “best of cider”, I believe. It is Spanish. That is what was on the bottle. It was Champaign Cider. So I took a drink of it. It was awful sweet. I didn’t care for it, so I gave that away to different ones.

The following night I asked him for another one and that was a bottle of the Nigarita rum, as the first one I got was.

Q. Did you drink that?

A. I drank some of it that evening and gave the rest of it away, gave drinks to different ones.

Q. Do you remember some of the people to whom you gave those drinks?

A. Yes. Lee Holmes, Robert Clark, Herman Lee, this Tibbett. Well, there are some more. I just can’t think of their [1913] names right now.

Q. Now does that account for three bottles?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Were there any more?

A. Yes, I believe there was—well, I didn't ask the captain for any more right then until the night—until we got to Pasjes. That was several days after before I asked him for any more, but he gave me—I went up one night. In fact, I sent an oiler by the name of Webb up after a bottle. I was just getting ready to take a bath and he asked me if I had anything to drink. I said: "No. The captain has some of mine. Will you go up and get it. Tell him I would like to have a bottle."

Well, he went up and he said: "If Buckless wants his bottles tell him to come up himself and get them."

Q. Who said that?

A. The captain told this to Webb.

Q. And Webb told you, did he?

A. Yes, Webb told me.

So after I had taken a bath I went up and asked the captain. So he gave me another bottle and that turned out to be Champaign Cider. So I was explaining to the captain that it was nothing but sweet cider and asked him if he had any more there.

He said: "Yes, there is one more bottle." [1914]

I asked him what it was. He said he didn't know; he hadn't looked at it. We examined it and found it was this Nigarita rum.

So I said, "I think if that was mixed up it would be a pretty good drink"; put the both of them together, the cider and the Nigarita rum, because that

(Testimony of Clarence Buckless.)

Nigarita rum is pretty strong. So I mixed up some of that and gave the rest of the cider to this fellow Webb and I kept some of the rum and drank it the night that we sailed from Pasjes.

Q. Now do you remember who else helped you drink that? Anybody? A. No, sir.

Q. At Pasjes? A. No, sir.

Q. Now did you miss a watch shortly thereafter or miss some time during the day when you were supposed to be working?

A. Well, the next day——

Q. Is this the day after you left Pasjes?

A. Yes. The next day I didn't feel very good in the morning. I had an awful headache and I believe the mate had me cleaning up dunnage down in the forward hold. Dunnage, I suppose you know what that is. It is lumber, different stuff they use for packing case goods, and we carried some case goods over there. Well, we were piling this up, cleaning up the holds and sweeping, and my head was aching so bad that every time [1915] I would kneel down to pick up a board it was just too much for me. So I went back in the hospital and laid down; figured if I laid down there a few minutes I would be all right.

Well, I hadn't any more than laid there five minutes before the mate came back after me. He must have been following me, because he came in soon after I was in there and told me that I wasn't doing him any good in there.

(Testimony of Clarence Buckless.)

I said: "All right, sir." And I went back to work again.

I worked a little while and it was just too much for me and I told him I was going back and turn in, which I did. I went back to my room and went to bed. That afternoon I got up at—no. I stayed in bed until 4:00 o'clock. At 4:00 o'clock they had fire and boat drill. [1916]

Q. They had what?

A. They had fire and boat drill and I got up and attended the fire and boat drill and went back and ate supper and the next morning I felt fine.

Q. What did the mate say to you there in the hospital?

A. He said I was doing him no good there.

Q. Did he ever make any other reference to your missing that time?

A. That is the only word he ever said to me about it.

Q. Did he ever warn you about drinking?

A. No, sir.

Q. Did the captain ever make any reference to that time?

A. Nothing. Only the first time he handed me the bottle or handed it to the chief mate he said: "Now, Buckless, use that right. Don't get drunk."

Q. Did the captain ever make any reference to your missing this time when you were one day out of Pasjes? A. No, sir.

(Testimony of Clarence Buckless.)

Q. Now, Mr. Buckless, while you were aboard the "Nevada" did that boat ever stop at Providence, Rhode Island?

A. Never while I was on it.

Q. Never while you were on it?

A. No, sir.

Mr. Martin: At this time, Mr. Examiner, I would like to ask the respondent to produce from the "Nevada" any documentary [1917] evidence from the log book, either the log book or any other official documentary evidence, showing that the "Nevada" ever stopped at Providence, Rhode Island, while Mr. Buckless was aboard.

Mr. Van Dusen: Mr. Examiner, the "Nevada" is now at sea, but I will be glad to produce the records at the next hearing.

Q. (By Mr. Martin) Now, Mr. Buckless, when was it you were on the "Nevada"?

A. November 17, on or about, 1937, until April 18, on or about, 1938.

Q. Mr. Buckless, while you were on the "Nevada" how many times did it go to New Haven?

A. Twice.

Q. Was one trip made before the Spanish trip and one after? A. Yes, sir.

Q. When the boat was in New Haven on the trip prior to the Spanish trip what did you do?

A. That is, when I went ashore?

Q. Yes, when you went ashore.

A. Well, I have a sister living at Jewell City, a short way from New Haven, Jewell City, Con-

(Testimony of Clarence Buckless.)

necticut. As I told you, my wife died in 1937. I have three children and my second sister was keeping one for me and she had appendicitis and I had called her up that day and she had told me. That was the [1918] first I had known of it. So I went down to Jewell City right away to see her, I stayed there until about 12:00 o'clock that evening and my brother-in-law brought me back to the ship. I never had a drink.

Q. Who had appendicitis?

A. My daughter.

Q. You say you never had a drink while you were off the boat then? A. No, sir.

Q. Now when you were in New Haven after the boat returned from Spain tell us what happened there while you were there.

A. Well, that evening I got off work at 5:00 o'clock. I forget just what time I went ashore. It was around 8:00, I imagine; 7:00 or 8:00. I went up town, purchased a suit and bought a suit case and some cigarettes and regular stores for the trip and had a few beers and went into one bar room and I found the first assistant engineer.

Q. Of the "Nevada"?

A. Off the "Nevada".

Q. What is his name?

A. Tomlinson. He asked me if I would have a drink. I believe the radio operator was already in there with him and the steward Jensen. Well, they went back to the ship a little ahead of us. We stayed there and drank.

(Testimony of Clarence Buckless.)

Q. Who stayed there? [1919]

A. Mr. Tomlinson and I. The radio operator and Mr. Jensen went back aboard, I should say, a little after 11:00 and at about 12:00 Mr. Tomlinson called a cab and we both went aboard.

Q. Do you know how much you had to drink?

A. I really couldn't say just how many I drank that night.

Q. What were you drinking?

A. Drinking beer.

Q. What was Mr. Tomlinson drinking?

A. I believe he was drinking highballs.

Q. Highballs? A. Yes, sir.

Q. When you went aboard the boat were you intoxicated? A. No, sir.

Q. While you were in the taxi were you intoxicated? A. No, sir.

Q. While you were in the taxi was Mr. Tomlinson intoxicated?

A. Well, I wouldn't just know now whether—I know he was sick.

Q. He was sick? A. Yes, sir.

Q. In the taxi cab?

A. Yes, sir. I wouldn't say whether he was drunk or not, because I don't know. A man, they say, when he is drunk he can't go no further. [1920]

Q. Well, is Mr. Tomlinson a good friend of yours?

A. Well, he is an ordinary friend, as sailors are.

Q. And do you have any regret about testifying concerning this incident?

(Testimony of Clarence Buckless.)

A. Well, there is a lot of things, as an officer, I wouldn't want to bring his name into things too far that would hurt him.

Q. Did you assist Mr. Tomlinson aboard the ship that night? A. I did.

Q. Did he assist you? A. No, sir.

Q. Did you report for duty the following morning? A. I did.

Q. At what time? A. At 8:00 o'clock.

Q. How were you feeling?

A. I was feeling normally as I generally am.

Q. By the way, Mr. Buckless, does Mr. Rosen smoke? A. No, sir.

Q. Now do you remember being in Boston while you were on the "Nevada"? A. Yes, sir.

Q. Will you tell us what happened there?

A. Well, I went ashore in the afternoon the day we arrived with two ordinary seamen. They had never seen subways or the [1921] elevated. So I took them through the elevated and the subway train, as I know Boston pretty well, which took up quite a lot of the afternoon and that evening I went out to a cousin's house. From there we went to a dance hall and danced and drank a few beers and came back aboard the ship, and I believe I got back aboard the ship around 12:00 o'clock that evening.

Q. Were you drunk when you came aboard?

A. No, sir.

Q. Did you report for duty the next morning?

A. I did.

(Testimony of Clarence Buckless.)

Q. At what time?

A. 8:00 o'clock, as usual.

Q. What time did the boat leave port?

A. The boat left port in the morning.

Q. Well, did the boat leave port the next day?

A. Yes, sir.

Q. You were off the boat just the afternoon and evening before? A. Yes, sir.

Q. Do you know what time the boat left the next morning?

A. I don't know exactly. It was before breakfast, I believe; around 7:00 o'clock.

Q. Around 7:00 o'clock?

A. I believe it was around 7:00. [1922]

Q. Did you help get her away?

A. Yes, sir.

Q. Did you direct the activities of the men in your crew? A. I did, yes, sir.

Q. Was Mate Olson there? A. Yes, sir.

Q. Was he in a sober condition?

A. I believe so as far as I know.

Q. What did you do after you assisted the men in getting the boat away from shore?

A. We went back and had breakfast and after breakfast at 8:00 o'clock I turned to to do my regular routine of getting the ship ready for sea, stowing lines, washing oil off the tanks and Elridge plugs, and then I washed down, stowed cargo gear away, the booms, runners, falls, and blocks.

Q. Were you sober that day? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. How long did you work that day?

A. I worked until about 4:00 o'clock that evening. When we finished washing down the 4:00 to 8:00 watch came on just then. So I told them to clean up in the shelter deck, sweep up and clean up in the shelter deck, and I said: "After that, knock off," and I knocked off myself a few minutes before 4:00.

Q. Now was there a man by the name of Smith aboard? [1923]

A. Yes, sir.

Q. Did you see him that day?

A. I did.

Q. Tell us about that.

A. Well, he was drinking pretty heavy.

Q. What was Mr. Smith's job?

A. A. B.

Q. Under you?

A. Yes, sir.

Q. You were boatswain?

A. Yes, sir.

Q. Go ahead.

A. And he kept coming in my room. I guess he thought I had some liquor. He asked me for some. I said: "I haven't got any."

So he kept tantalizing me and I told him to stay out, which he didn't do. So I slapped him a little. In fact, I marched him into his forecandle and told him to stay there. So he came back in my room again. So I told him if he didn't get out I would hit him. So he drewed a knife on me. When he pulled the knife out I give him a couple of good shiners and sent him to his bed and he stayed there until 8:00 o'clock that night.

Q. When did you next see Mr. Olson?

(Testimony of Clarence Buckless.)

A. Well, I seen Mr. Olson—he called me at about 4:30 [1924] that evening and he asked me what I was doing.

I said: “Nothing now.” I said: “I finished washing down and getting everything all shipshape. The 4:00 to 8:00 watch, I sent them to sweep up and clean up in the shelter deck and,” I said, “I knocked off myself about 4:00 o’clock.”

He said: “That is all.”

I went back aft.

Q. Mr. Buckless, when you are sailing, when you are out at sea, do you customarily do any drinking? A. No, sir.

Q. Mr. Buckless, how long had the “Nevada” been at sea before it got to Spain?

A. From Port Arthur here?

Q. Yes.

A. Practically twenty-three days before we hit the first port in Spain.

Q. Did you go ashore at the first port?

A. No, sir. [1925]

Q. Did the men want to?

A. Well, I believe they would have liked to. In fact, I would have.

Q. Did the men go ashore at the second port?

A. Yes, sir.

Q. How long were they allowed ashore?

A. All night.

Q. One night?

A. No, two nights.

Q. Two nights?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. After twenty-three days at sea?

A. Yes, sir.

Trial Examiner Myers: You mean two nights and one day?

A. Two nights. There was two days and two nights we were allowed ashore. Those men off watch could go in the day time.

Q. (By Mr. Martin) Could anybody have stayed off two nights and a whole day or would he have to go back during the day?

A. No, he would have to go back and stand his watch. They kept on the regular watches, four on and eight off.

Q. Now was that at Bilbao?

A. That was at Bilbao.

Q. Then were the men allowed off the boat at Pasjes? [1926]

A. No, sir.

Q. So that after twenty-three days at sea am I correct in saying that the men were allowed off the boat only for two nights and whatever of the intervening day they weren't supposed to serve on duty?

A. Two nights and two days when they were off watch.

Q. You have been on a boat a good many years, Mr. Buckless?

A. Yes, sir.

Q. You have seen the amount of drinking in ports, have you, during those years?

A. Yes, sir.

Q. Would you say there was more or less drink-

(Testimony of Clarence Buckless.)

ing in Bilbao that time and in the Spanish ports than is customary in one of our American ports here; that is, more drinking by the sailors on your ship?

A. Well, I wouldn't say any more. Of course, at that time I believe there was a little whiskey brought aboard the ship.

Q. More drinking aboard the ship?

A. Yes. Of course in Port Arthur here they have places to go to in their home port or any place here in the States; more so than they do over there.

Q. Would you say that there was more drinking aboard the ship there than is customary aboard the ship in American ports?

A. I would say so, yes, sir. [1927]

Q. Now, Mr. Buckless, you have told me about your movement in Bilbao and at New Haven and Boston. Now is it or is it not true that while you were on the "Nevada" you did most of your heavy drinking, if such it may be called, at those ports we have just been discussing? A. Yes, sir.

Q. Did you do some drinking at some other port? A. I drank in Port Arthur.

Q. Did you ever get on the boat drunken——

A. No, sir.

Q. At Port Arthur?

A. No, sir, or any other port.

Q. Or any other port?

A. Or any port while I was aboard her.

(Testimony of Clarence Buckless.)

Q. And you say you did not do any drinking while the boat was at sea? A. No, sir.

Q. Other than the time you have indicated, if at all?

A. Well, the night, perhaps the night of sailing, if anybody has anything to drink, or I, myself, I would take a drink, when my work is done.

Q. Now is whiskey a part of your regular diet?

A. No, sir.

Q. At sea or in port? A. No, sir. [1928]

Q. Do you have to have a certain amount of whiskey daily to get along? A. No, sir.

Q. Do you have a habit of drinking regularly?

A. No, sir.

Q. Can you get along without it?

A. Yes, sir.

Q. Are you an habitual drunkard?

A. No, sir.

Q. Have you ever been? A. No, sir.

Mr. Martin: That is all.

Cross Examination

Q. (By Mr. Van Dusen) Mr. Buckless, have you ever been drunk?

A. Yes, I have been drunk.

Q. On many occasions? A. No, sir.

Q. About how many would you say?

A. Well, I remember one, about 1927 or 1928. I was at home. It was on one Christmas, and I really got drunk.

(Testimony of Clarence Buckless.)

Q. Is that the only time?

A. That is the only time I can remember that I was drunk.

Q. Mr. Buckless, that incident in Boston when you referred to a man by the name of Smith coming into your room, about [1929] what time of day was he coming into your room?

A. Well, I should say from a quarter to four until about four-thirty, just before the mate had called me.

Q. He didn't come into your room anytime prior to a quarter to four, you say?

A. No. I was on deck at that time, and I wouldn't know.

Q. Now with this incident at Claymont, Delaware, when you were on the "Washington," did you get the consent of one of the officers to have Mr. Zehreel take your watch?

A. No, I didn't.

Q. Did you do that often, have a man switch for you without getting consent?

A. Yes. I had done it before with Mr. Zehreel in New Orleans; and if the mate doesn't want it done, he would say so. He would have said something then.

Q. Well, at the time you said that the chief mate of the "Washington" discharged you for missing a watch, was anybody present that you remember?

A. No, I don't.

Q. Just you two?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Now the incident at Bilbao, Spain, I believe you testified that you went ashore with Mr. Holmes, is that correct? A. Yes, sir.

Q. I believe you also testified that you and Mr. Holmes [1930] had about the same amount to drink, is that right?

A. I wouldn't know whether he did or not that morning earlier in Bilbao before we came down to the dock. We drank about the same amount at the dock.

Q. What was his condition up to the time you got to the dock?

A. Well, it was very good.

Q. He was not drunk? A. No.

Q. Was he drunk when you got in the boat?

A. He was feeling pretty good then.

Q. Would you say he was drunk?

A. No, I wouldn't say that he was drunk at that time.

Q. Now later that day, I think you testified you found him in his bunk drunk?

A. I said he was getting pretty well along under the influence of liquor at that time.

Q. Is that correct that you did find him in his bunk drunk? A. I wouldn't say drunk.

Q. You said that before, didn't you?

A. Well, I might have said it.

Q. Well, was he drunk?

A. I really believe he was drunk, yes.

Mr. Van Dusen: That is all. [1931]

(Testimony of Clarence Buckless.)

Redirect Examination

Q. (By Mr. Wright) Mr. Buckless, does that Mr. Holmes still work on the "Nevada"?

A. Yes, sir.

Q. So far as you know? A. Yes, sir.

Q. Does Mr. Kelly still work on the "Nevada"?

A. I believe so.

Q. So far as you know? A. Yes, sir.

Q. Have you seen Mr. Kelly in the court room in the last few days? A. Yes, sir.

Q. Is he in the court room now?

A. Yes, sir.

Mr. Wright: That is all. [1932]

Mr. Pipkin: To preface a further motion I want to make [1965] here, I would like to ask Mr. Martin, Mr. Mandell and Mr. Ames where Mr. J. Gordon Rosen is now.

Mr. Martin: He is on a boat which the last I heard of was in Europe.

Trial Examiner Persons: What line is he on?

Mr. Mandell: Lykes Bros.

Trial Examiner Persons: Do you know how long he has been on there?

Mr. Ames: Approximately five weeks.

Trial Examiner Persons: Where is Mr. Buckless?

Mr. Ames: Mr. Buckless sailed this morning, and this is the first time he has sailed since our previous hearing.

Mr. Pipkin: Do you know what ship he sailed on this morning?

Mr. Martin: On the "Gulfstar."

Mr. Pipkin: Do you know where bound for?

Mr. Martin: Coastwise.

Mr. Pipkin: And the Lykes ship foreign.

Mr. Martin: Yes, sir.

Mr. Pipkin: Where is Mr. Blasingame?

Mr. Ames: The last I know of him in Galveston.

Mr. Pipkin: Has he sailed since the last hearing?

Mr. Ames: I don't remember.

Mr. Pipkin: Do you know whether he is on the beach now?

Mr. Ames: No. [1966]

Mr. Pipkin: Do you know whether he has returned to his vocation of painting since?

Mr. Ames: No.

Mr. Pipkin: You don't know?

Mr. Ames: No.

Mr. Pipkin: Could you find out, Mr. Ames, before we conclude here, without too much trouble, what Mr. Blasingame is doing?

Mr. Ames: Yes, sir.

Mr. Pipkin: Where is Mr. Lortie?

Mr. Mandell: He is on a vessel. May I ask whether this inquiry is for the purpose of mitigat-

ing damages, in the event the Board should order renistatement?

Mr. Pipkin: I don't want to limit the purpose. I will make this plain in my motion.

Mr. Mandell: I would rather know the purpose before answering questions, if we may.

Mr. Pipkin: Well I can deduce my information by putting you on the stand, I think. If you don't want to tell me, it is all right.

Mr. Mandell: I will be glad to tell you, but I would like to know what you want to know it for. If you put me on the stand, I don't know anything about it. I would like to know the materiality of the questions.

Mr. Pipkin: One of the purposes in making this inquiry [1967] is that my motion which is to follow is going to be in line with the provision in the National Labor Relations Act that these men have obtained substantial and equivalent employment since they left The Texas Company. That is not by way of mitigation of damages, though I understand under some of the recent decisions it might be admissible for that purpose.

My inquiry is predicated on my motion to follow, that these men have obtained substantial and equivalent employment, under the terms and following the wording of the National Labor Relations Act.

Do you think, Mr. Mandell, Mr. Lortie is at sea now?

Mr. Mandell: That is our information. We will be glad to supply the respondent with as accurate information as we can get, by giving us some time. Frankly, I don't believe it ought to become a part of the record. We have no objection, because we feel that if the Board finds that these men have been discharged in violation of the Act, and orders their reinstatement, with back pay, then of course would be the time to look into these matters. However, if you desire the information for other purposes, we will be glad to supply you with whatever information we get.

Mr. Pipkin: It is also your information that Mr. Zinkiewycy is at sea now?

Mr. Ames: No, sir.

Mr. Pipkin: He is not at sea now? [1968]

Mr. Mandell: We don't know.

Mr. Pipkin: What was your last information on it? As I understood from talking to you at the previous hearing, he was at sea at that time.

Mr. Ames: Through error, I have learned. The last I heard, he was not on the "L. J. Drake."

Mr. Pipkin: You don't know whether he has reshipped or not?

Mr. Ames: No.

Mr. Pipkin: What about Mr. Andrews?

Mr. Mandell: He is on the "Gulfbreeze."

Mr. Pipkin: On the "Gulfbreeze"?

Mr. Mandell: Yes.

Mr. Pipkin: Now may it please the Examiner, respondent, before it gets into its case here, at the

conclusion of the Government's case, and after the resting of the Board and the complaining union, moves to dismiss the complaint and all charges, for the reason:

(1) That the Board has failed to prove any discharge by the respondent of any of the complaining witnesses or those filing charges for union activities.

(2) That the Board has failed to sustain its general allegation of violation of the National Labor Relations Act.

And further, and more specifically, the record shows, as a matter of law, that the complainants were merely employees [1969] under a specific contract, the shipping articles here in evidence, and their employment terminated as a matter of course on the termination or expiration of such contract.

And also that in practically every instance, every instance that I have been able to find out anything about, with the possible exception of Blasingame, that these complainants have obtained substantial and equivalent employment elsewhere, and therefore ceased to be employees of The Texas Company, under the National Labor Relations Act, if they should be considered to be employees after the expiration of the voyage in question and the expiration of the contract of employment, the shipping articles; and also that in every instance here the evidence clearly shows that the seamen either were discharged for cause or quit their respective vessels, and were not discharged for union activities. [1970]

This motion is made before we proceed. We don't want to prejudice it before we put on any testimony.

Trial Examiner Persons: Do you have anything to say, Mr. Martin?

Mr. Martin: No, Mr. Examiner, except that the motions are so palpably unsound that I don't need to say anything.

Mr. Pipkin: That is a matter of opinion for the Examiner, the National Labor Relations Board, the Circuit Court and the Supreme Court to say.

Mr. Martin: Correct.

Mr. Mandell: The complaining union joins in the statement of Mr. Martin.

Trial Examiner Persons: The motion will be denied at this time. [1971]

Mr. Pipkin: Respondent then offers this stipulation as to what the testimony of Captain Peter Peterson would be, he being in Norway at this time, having retired, and offers it as the testimony of Captain Peterson that he would give if he were present and were on the stand, and to be considered as the evidence of Captain Peterson.

Mr. Martin: Yes. We agree that on direct examination [1976] Captain Peter Peterson would testify as stated in this stipulation, on direct examination; and we want the record to note that we are not admitting the trustworthiness or truthfulness of the statement, and that we are not having an opportunity to cross examine him.

Trial Examiner Persons: The Union agrees?

Mr. Mandell: Yes, sir, subject to the same statement.

Trial Examiner Persons: Put it in with the same sort of heading as before, Mr. Etter, please, sir.

(The statement was received in evidence and is as follows:)

STIPULATION RE TESTIMONY OF CAPTAIN PETER PETERSON OF S/S CALIFORNIA

It is hereby stipulated and agreed, by and between counsel for the Labor Board, counsel to the National Maritime Union, and counsel for respondent, The Texas Company that:

Inasmuch as the testimony of Captain Peter Peterson of the SS "California" is considered important to respondent, The Texas Company, and since he has retired and is now and has for some time been in Norway, and since counsel for the Board and counsel for the Union do not desire to take the testimony of said Captain Peter Peterson by deposition on written interrogatories, his testimony, if he were called as a witness in this proceeding would be as follows:

1. That he was master of the SS "California" during [1977] the period June 30, 1937, to and including September 19, 1937.

2. That he recalls having as members of his crew during the period of time just referred to the following seamen who are complainants in this pro-

ceeding: J. Gordon Rosen, A.B. seaman; James Blasingame, quartermaster; Arthur Spencer, second pumpman.

3. That these men signed shipping articles on the SS "California" on June 30, 1937, and left that vessel on September 19, 1937.

4. That he has examined the crew list of the SS "California" for the voyage ending September 18, 1937, and, after such examination, definitely recalls that all three of said men were paid off by himself personally and that they told him at the time that they were voluntarily quitting the vessel.

5. That chief mate Dave Rosen was present at the time these three men informed him (Captain Peterson) that they were quitting.

6. That he at no time inquired of these men whether they were union men and did not discharge them for union activities or for any reason.

7. That he has never discriminated against these seamen or any seamen because of union affiliations or activities. [1978]

It is further stipulated and agreed that the foregoing shall be considered evidence in this proceeding to the same force and effect as if Captain Peterson so testified as a witness on direct examination.

[1979]

CLARENCE V. PETERSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Testimony of Clarence V. Peterson.)

Direct Examination

Q. (By Mr. Pipkin) Mr. Peterson, I understand that between June, or rather that during the year 1937, you were chief engineer on the "California"? A. I was.

Q. I want to ask you, as a chief engineer at that time and now, whether or not you, as chief engineer, would have any supervision or direction or control over what is commonly called the deck crew of a vessel?

A. No, I have not.

Q. Likewise the mates would have no supervision over your pumpmen or wipers, as the case might be? A. That is right.

Q. They would be under your jurisdiction?

[1980]

A. Yes, sir.

Trial Examiner Persons: With the qualification that in port these pumpmen do come under the first mate in discharging cargo and taking on cargo?

A. Yes, sir.

Mr. Pipkin: You are correct, Mr. Examiner. My question was directed to the time he was at sea.

Q. Mr. Peterson, in your dealing with men working on vessels on which you have been chief engineer have you ever discriminated against a man because he was a union member? A. No, sir.

Mr. Martin: I object, Mr. Examiner. That calls for a conclusion.

(Testimony of Clarence V. Peterson.)

Mr. Mandell: Discrimination has a certain legal significance. He can tell what he did, and it will be up to the Board to say whether it was discrimination or not.

Trial Examiner Persons: The difficulty is that the complaint carries that particular phraseology. To answer the complaint he must use the language of the complaint.

Mr. Mandell: I don't think so. The complaint is couched in legal phraseology.

Trial Examiner Persons: Will you try to restate the question?

Mr. Pipkin: In answer to what the Examiner said, we were discussing it in private a while ago, and you can have [1981] it in your mind, without resorting to a legal conclusion, whether or not you have discriminated against a man. I will admit that discrimination has a very definite meaning, particularly as used in the Wagner Act, and particularly as it has been used very broadly in this hearing throughout.

Trial Examiner Persons: Will it serve the purpose if we ask Mr. Peterson whether he has ever treated union members different from nonunion members?

Mr. Pipkin: That in effect is the question I am getting at.

Q. Have you treated union members any different from nonunion members? A. No, sir.

Q. Has it been your experience on Texas Com-

(Testimony of Clarence V. Peterson.)

pany vessels that union men have been treated differently from nonunion men?

A. No, sir, not in my department. I never knew whether they belonged to the union or not. I never asked.

Q. Have you discussed union activities or union matters with the men working under you?

A. No, sir, I do not.

Q. Isn't it a fact that you yourself have been a union man? A. I have.

Q. Isn't it a fact that you yourself came up from the bottom in the work you are now doing? [1982]

A. Yes, sir.

Q. I haven't asked you anything about this, Mr. Peterson. Have you seen any working rules posted on the "California" or on other vessels you were working on?

A. Not while I was aboard there do I ever remember seeing any.

Trial Examiner Persons: Could we have the working rules defined a bit?

Mr. Pipkin: Off the record.

(Discussion off the record.)

Trial Examiner Persons: My question was directed to Trial Examiner's instructions, which say that the transcript must always be clear and understandable to the people that read it. Working rules might mean one thing to The Texas Company attorney, and something else to some person who might read the record, and might not understand.

(Testimony of Clarence V. Peterson.)

Mr. Pipkin: I will state that I was asking about those rules posted by the company on each of its vessels, signed by the company, setting out its policy with reference to its employees, as to hours of work, or conditions of work, and so forth.

That is all I wanted to ask Mr. Peterson.

Trial Examiner Persons: What order have we followed, the Board and then the union?

Mr. Martin: Correct. [1983]

Trial Examiner Persons: Mr. Martin.

Cross Examination

Q. (By Mr. Martin) Mr. Peterson, in what dining room on the boat does the chief engineer customarily eat his meals?

A. The officers' mess room.

Q. Who else eats in that mess room?

A. On that ship, all the licensed men eat there.

Q. Will you relate who that includes?

A. The captain, three mates, wireless operator, chief engineer and his three assistants.

Q. Is that room also referred to customarily as the salon mess room? A. Yes, sir.

Q. And it is generally understood that the officers on the ship eat in it? A. They always do.

Q. If through coincidence of circumstances the captain and all three mates happen to be off the boat when the boat is on the high seas who is in charge of the boat? A. I wouldn't know.

Q. What if it happened at port?

(Testimony of Clarence V. Peterson.)

A. They would be violating the law. There must be one licensed man on deck and in the engine room at all times.

Q. I am sorry. I didn't hear that.

A. They would be violating the law. There should be a [1984] licensed man on deck and in the engine room at all times.

Trial Examiner Persons: While the ship is in commission? A. Yes, sir.

Q. Some ships are laid up with only a watchman? A. That is a different procedure.

Mr. Martin: That is all. [1985]

Q. (By Mr. Mandell) Mr. Peterson, as the Chief Engineer, you have complete and full charge of all the unlicensed members of the crew designated as the black gang? A. Yes, sir.

Q. However, the general executive aboard the ship is the master?

A. Not over the engine room.

Q. Would you tell us whether a master has the right to discharge a member of the black gang department, of the unlicensed black gang, without consulting the engineer? A. They always have.

Q. They have that right?

A. They consult with me beforehand.

Q. Have they got the right to discharge them without consulting you?

A. I don't know. I have never been up against that proposition.

(Testimony of Clarence V. Peterson.)

Q. He has full and complete charge of the vessel?

A. So far as the engine room is concerned, that is all I know.

Q. Will you answer the question. Who has full and complete charge of the vessel?

A. Well, I wouldn't say that the captain had charge of the engine room.

Trial Examiner Persons: I didn't quite hear.

[1986]

Q. (By Mr. Mandell) I didn't ask you anything about the engine room. I asked you who has full and complete charge of the vessel.

A. As far as navigation is concerned——

Q. As far as anything is concerned, who is the executive head of the vessel?

A. The captain would represent the company.

Q. Does the captain have complete charge of the vessel?

A. Well, I wouldn't know, because I have charge of the engine room.

Q. How long have you gone to sea?

A. About thirty years.

Q. And you started from the bottom?

A. I started in as wiper, yes, sir.

Q. In your experience of thirty years at sea you have shipped on the deck? A. No, sir.

Q. Never shipped as ordinary seaman?

A. No, sir.

Q. Or A. B.? A. No, sir.

(Testimony of Clarence V. Peterson.)

Q. Quartermaster? A. No, sir.

Q. Always stuck to the engine department?

A. Always. [1987]

Q. How long have you served with The Texas Company?

A. It will be twelve years, I believe——

Q. You are with The Texas Company now?

A. I am.

Q. For the past twelve years you have been employed on their ships? A. Yes, sir.

Q. As a licensed officer? A. Yes, sir.

Q. And you answer, "I don't know," to the question I propounded to you, which is, who has complete charge of the vessel?

A. Well, the engine room is under my charge at all times.

Q. I didn't ask you that. Would you tell us that the master has no authority to discharge any unlicensed member of the crew in the black gang?

A. He never has in my experience.

Q. He never has exercised that authority?

A. He never has as long as I have been there.

Q. You don't know whether he has that authority or not? A. No, I don't.

Mr. Pipkin: Mr. Examiner, I think this is quite a little argumentative.

Trial Examiner Persons: I think the record is clear.

Q. (By Mr. Mandell) Now, Mr. Peterson, have you got anything [1988] to do with reference to

(Testimony of Clarence V. Peterson.)

the policies that the master has about what members of the Union to employ or what members of the Union not to employ? A. No, I haven't.

Q. You have nothing to do with that?

A. No, sir.

Q. When a man is signed on on a ship, who signs him on?

A. Foreign, it would be before the United States Shipping Commissioner.

Q. In coastwise trade?

A. Signed on in front of one of the officers.

Q. Is he signed on by the captain?

A. Not necessarily.

Q. Generally?

A. I have seen the mate sign them on time and time again.

Q. Have you ever seen the chief engineer signing them on? A. No, sir.

Q. Did you say, no? A. I never have.

Q. And generally the master, or the mate under the master, is the one that signs the members of the crew on? A. Yes.

Q. Whether they be in the stewards' department, deck department or black gang department, that is correct, isn't it? A. That is right. [1989]

Q. And what you meant to testify therefore, as I understand, is that you personally did not care what union they belonged to? A. I did not.

Q. You don't know what questions or what in-

(Testimony of Clarence V. Peterson.)

vestigations the master or mate made with reference thereto?

A. No, sir, I don't because I am never around there only long enough to do my own signing.

Mr. Mandell: That is correct. That is all for me.

Q. (By Mr. Martin) Mr. Peterson, are you at the present time assigned to any vessel?

A. I am with the "Connecticut," a new ship about ready to go in commission for The Texas Company.

Q. That is a new boat?

A. She will go in commission possibly the middle of next month.

Trial Examiner Persons: You are in charge of installing the machinery perhaps?

A. Yes, sir, and I am going out as Chief Engineer.

Q. (By Mr. Martin) When did you last sail on a boat that is now in commission?

A. If my memory serves me right, it was about the seventh of January of this year.

Q. Do you have a contract of employment with The Texas Company? [1990]

A. No, I have not.

Q. Do you have any written arrangement with The Texas Company? A. Not a line.

Q. Mr. Peterson, when you are going to sea do you sign shipping articles just like any other man that is going? A. I do.

(Testimony of Clarence V. Peterson.)

Q. And when you sign shipping articles that constitutes the only contract of employment you have with The Texas Company?

A. That does.

Q. Did you sign any shipping articles in connection with your present employment?

A. No, I did not.

Mr. Martin: That is all.

Redirect Examination

Q. (By Mr. Pipkin) The first pumpman is not an officer, is he? A. No, sir.

Q. The second pumpman is not an officer?

A. No, sir.

Q. Oiler or wiper? A. No, sir.

Q. They merely follow instructions?

A. That is all. [1991]

Q. Suppose a man on a ship working in your department was a pumpman, and he doesn't render satisfactory service, or doesn't know his business, and you decided he ought to leave the ship, what would you do about it?

A. Just tell him he is finished, that I don't want him any more.

Q. And he gets his pay and discharge from the master and leaves? A. Yes, sir.

Q. Does the master follow your recommendation in those matters? A. He does.

Mr. Pipkin: That is all.

(Testimony of Clarence V. Peterson.)

Recross Examination

Q. By Mr. Mandell) You mean you report to the master that the man is not satisfactory, and the master pays him off.

A. I tell him he is finished.

Q. How does the master know?

A. I give him a slip to go up there and tell the skipper that the man is to be paid off.

Q. Who tells the skipper? A. I do.

Mr. Mandell: That is all.

Mr. Martin: That is all. [1992]

Mr. Pipkin: That is all. Is it all right to excuse this gentleman?

Mr. Martin: Yes, sir.

Trial Examiner Persons: So far as I know, do you gentlemen need him further?

That is all Mr. Peterson.

Mr. Pipkin: Mr. Examiner, will you give us until 2:00 o'clock now?

Trial Examiner Persons: What will the understanding be when we come back at 2:00 o'clock?

Mr. Pipkin: That we will proceed immediately with my witnesses.

Trial Examiner Persons: Yes, I will be glad to do that. You have no objection?

Mr. Martin: No objection.

Trial Examiner Persons: Adjournment until 2:00 o'clock, by the official clock.

(Thereupon, a recess was taken until 2:00 o'clock p.m.) [1993]

G. A. BERGMAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Pipkin) Your name is Captain C. A. Bergman? A. Yes, sir.

Q. How long have you been going to sea, Captain? A. Thirty-eight years.

Q. How long have you been with The Texas Company? A. Twelve years.

Q. Have you been a master all that time?

A. Yes, sir.

Q. Were you master of the "Washington" from the first of June of this year—are you still the master of the "Washington"? A. Yes, sir.

Q. You were master of the "Washington" along about the first of June, 1938? A. Yes, sir.

Q. Do you recall a man by the name of Zinkiewicz? A. Yes, sir.

Q. And a man by the name of Buckless? [1995]

A. Yes, sir.

Q. And a man by the name of Rosen?

A. Yes, sir.

Q. What did they do on your ship? About when did they get on, Captain?

A. They came on board some time the beginning of June, two of them A. B.'s, and the third one, quartermaster. Buckless was quartermaster. Zinkiewicz and Rosen were A. B.'s.

(Testimony of G. A. Bergman.)

Q. Under whom did Rosen and Zinkiewicz work directly?

A. Under the chief mate's orders.

Q. They were part of the deck force?

A. Yes, sir.

Q. Did you have any occasion to observe Mr. Buckless? How many trips did you make while they were on board?

A. Two trips while they were on board.

Q. Did you have occasion to observe Mr. Buckless while he was on board? A. Yes, sir.

Q. Do you recall the time he came on?

A. I didn't see him coming on directly that I remember, but I saw him the same day he did come on board.

Q. Did you sign Mr. Rosen on? A. Yes, sir.

Q. And Mr. Zinkiewicz? A. Yes, sir.

[1996]

Q. Did you sign them on about the same time?

A. Yes, about one after the other, in my office.

Q. Did these men sign regular coastwise shipping articles?

A. Yes, sir, they signed regular coastwise shipping articles.

Q. How many forms of shipping articles did you use, Captain?

A. I use one form to sign on, and then another form without signatures, to be posted in the crew's quarters.

(Testimony of G. A. Bergman.)

Q. What quarters?

A. The crew's mess room.

Q. Did you use one form for coastwise, and one form for foreign voyages?

A. No, sir, coastwise articles are Texas Company articles.

Q. And foreign articles?

A. Foreign articles are United States Shipping Commissioner articles.

Q. I hand you here shipping articles bearing date June 1, 1938. I will ask you if that is your signature to those shipping articles?

A. Yes, sir, that is my signature to those shipping articles.

Q. And bears what date?

A. June 1, here.

Q. This year? A. 1938. [1997]

Q. Do you see where Buckless signed on?

A. Right here, No. 6.

Q. As what? A. As quartermaster.

Q. Do you see where Mr. Zinkiewycz signed on?

A. No. 10.

Q. As what? A. A. B.

Q. Gordon Rosen? A. No. 11.

Q. As what? A. A. B.

Q. They signed articles before you?

A. Yes, sir.

Q. Do you see the signature of Mr. Zihrul?

A. No. 7.

Q. How did he sign on? A. Quartermaster.

(Testimony of G. A. Bergman.)

Q. When were those articles signed in relation to the time you sailed, Captain?

A. The length of voyage?

Q. Did you have them signed before you sailed or after you sailed?

A. I sign them before the ship leaves the dock.

Q. Is it the custom to have articles signed on every voyage? [1998]

A. Absolutely, at the beginning of every voyage.

Q. I hand you here another shipping articles. That is your signature, Captain?

A. Yes, sir, that is my signature.

Q. What date? A. June 22.

Q. The same shipping articles you have just testified about?

A. Exactly the same thing.

Q. Open it and see if Mr. Buckless signed those shipping articles.

A. Buckless is No. 8 on these articles.

Q. And Mr. Zinkiewicz? A. No. 9.

Q. And Mr. Rosen? A. No. 10.

Q. They signed one after the other?

A. Yes, they signed on at the same time.

Q. One name after the other? A. Yes, sir.

Q. Mr. Zihurul signed that?

A. Zihurul is No. 6.

Q. And they signed before you?

A. Yes, sir.

Q. Before the ship sailed? [1999]

A. Before the ship sailed, in every instance.

(Testimony of G. A. Bergman.)

Trial Examiner Persons: Some of these men have the same ratings.

Mr. Pipkin: Same capacity. Buckless was quartermaster, Mr. Zinkiewycz was an A. B., Mr. Rosen was an A. B., and Mr. Zihrul was quartermaster.

I think these have been offered before as Respondent's Exhibit 5 and Respondent's Exhibit 11.

Trial Examiner Persons: And were they introduced, Mr. Pipkin?

Mr. Pipkin: Yes, sir, I think so.

Q. Captain Bergman, do you recall the time during the time Buckless was on the ship, do you recall the time you were at Claymont, Delaware?

A. Yes, he was on board when we were in Claymont, Delaware.

Q. Do you recall when you reached Claymont?

A. We reached Claymont on the 3rd of July.

Q. Of 1938? A. Of 1938.

Q. What did you do during the 4th of July, what did the ship do?

A. The 4th of July the ship was discharging cargo alongside of the dock.

Q. And sailed when?

A. Early on the morning of the 6th. [2000]

Q. What are the duties of a quartermaster, as was Mr. Buckless, while the ship was in port?

A. The duties of the quartermaster while the ship is in port is to stand watch, watch the discharge of cargo, and close and open valves, as directed by the mate on deck.

(Testimony of G. A. Bergman.)

Q. Who sets the watches, Captain?

A. The chief mate sets the watches. He arranges the quartermasters.

Q. Are seamen, quartermasters and otherwise, allowed to shift their watches without permission?

A. No, sir, they are not, unless they get permission from the chief mate. [2001]

Q. Did Mr. Buckless ask permission of you to shift his watch on the night of July 4?

A. No, he did not.

Q. Did he stand his watch the morning of July 5? What was his watch?

A. His watch was from midnight to 4:00 in the morning.

Q. Did he stand his watch the morning of July 5?

A. The second mate reported to me that he did not stand his watch.

Q. Why, Captain?

A. Because, the second mate reported to me the next day, that Buckless was in a drunken condition, and could not stand his watch, and could not get him out of his bunk.

Mr. Martin: Mr. Examiner, I move to strike that last answer as not responsive to the question.

Trial Examiner Persons: Read the question, please.

(Question read.)

Mr. Mandell: And for the further reason that it is the rankest sort of hearsay. I assume they will have the mate here.

(Testimony of G. A. Bergman.)

Mr. Pipkin: The mate is here and will follow the Captain.

Mr. Mandell: This second mate is here, and certainly when the best evidence is available I don't see why they should not use the best evidence.

[2002]

Trial Examiner Persons: This stands as an official report from the second mate to the captain. Objection overruled.

Q. (By Mr. Pipkin) Captain Bergman, what did you decide to do about Buckless missing this watch?

A. After we got out to sea and I was discussing the matter with the chief mate, and also the second mate whose watch he was on, I made a decision not to rehire him at the final port of discharge, which was Port Arthur.

Q. Was that done? A. It was done.

Q. Did you sign his discharge? A. Yes, sir.

Q. Who gave Mr. Buckless his discharge?

A. The chief mate did.

Q. Captain Bergman, do you recall the type of work done by Rosen and Zinkiewycz on the two voyages you have mentioned?

A. They did all the ordinary work around the decks that is required on a tanker.

Q. What sort?

A. Cleaning, washing paint, chipping and so forth.

Q. What sort of workmen were they, Captain?

(Testimony of G. A. Bergman.)

A. By the experience I have had going to sea all these years, they were the kind of men I would not carry on the ship. [2003]

Q. Why?

A. Because their work was not sufficient; that is, they didn't do enough work, as the other members of the crew did.

Q. Was a complaint ever made to you about the way they worked?

A. The chief mate made several complaints right along about those two men.

Q. What was the nature of his complaint?

A. Well, he said they were lagging in their work. They didn't do enough painting, and whatever they did it was not well enough done.

Q. Did you see them yourself?

A. Yes, I watched them after that myself.

Q. Did you see whether or not they were lagging?

A. Yes, sir, very lagging. Whenever there was work done they stood around looking up while the other men were working, which I afterward mentioned to the mate, after the mate made the complaint. I had been watching them myself.

Trial Examiner Persons: Could we have the names of the mates?

Mr. Pipkin: Johannesen.

Trial Examiner Persons: And the second mate?

Mr. Pipkin: Mr. Carr.

(Testimony of G. A. Bergman.)

Q. What did you decide to do about these men, Captain Bergman? [2004]

A. After the first, second voyage I decided to let them go; not to sign them on again, on arrival at Port Arthur.

Q. Which voyage? A. Two voyages.

Q. When did you decide to let them go?

A. On the second voyage.

Q. Did you discuss your decision with the mate?

A. Yes, sir, I discussed my decision with the mate time and time again.

Q. Captain Bergman, will you please tell me what this is? A. That is the crew list.

Q. Does your signature appear on it?

A. My signature is on the back of it.

Q. Is it dated? A. July 16.

Q. And the crew list is for what, covering what vessel? A. The "Washington".

Q. Do the names of Zinkiewycz, Rosen or Buckless appear on it?

A. No, there are none of those names here on this side. The names are on the other side.

Q. Under what caption, what heading?

A. Under the caption, "Paid off this trip, left ship."

Q. After Clarence Buckless what do you have?

A. Well, "Drunk while on duty; unable to stand watch." [2005]

Q. After Zinkiewycz what do you have?

A. "Discharged for incompetency."

(Testimony of G. A. Bergman.)

Q. After Gordon Rosen what do you have?

A. "Discharged for incompetency."

Q. Who made those entries on there?

A. I did myself.

Q. You made those entries at the time you signed them?

A. At the time I paid them off.

Mr. Pipkin: We would like to offer this in evidence.

Mr. Martin: No objection.

Mr. Mandell: The complaining union objects to the introduction of this instrument because, first, it is a self serving declaration; secondly, it has not been shown at all that these men had anything to do with the entry or the reason for which they have been discharged, for which allegedly they have been discharged; and, third, the instrument has not been proven, and no predicate has been laid which would permit such an instrument to be in evidence; and, fourth, that the master has not shown the necessary elements which may under some circumstances permit such an instrument in evidence for whatever probative value it may have.

Trial Examiner Persons: The objection will be overruled, and the document will be received and placed in evidence, being respondent's Exhibit No. 18.

(Thereupon the document above re- [2006]ferred to was marked as "Respondent's Exhibit No. 18" for identification and was received in evidence.)

RESPONDENT'S EXHIBIT No. 18

CREW LIST

Vessel	S/S "Washington"	Sailing Date	To	Wife—
From	Port Arthur, Texas.	July 16th.	Los Piedras, Venezuela,	Via Cristobal, C. Z.
15	Nat Dilbert	49	Ch. Eng.	M 3209, 6th. St. Port Arthur, Tex.
16	Ivar N. Riise	65	1st. Asst.	M Wife— Smallwood, L. L., N. Y.
17	W. A. Gower	34	2nd. "	S Mo—Mrs. W. A. Gower, 2611 Tyson, Ave., Tampa, Fla.
18	R. E. Murphy	31	3rd. "	M Wife— 120, 73rd. Houston, Tex.
19	A. Maselli	39	Pumpman	S Aunt—Margaret Maselli, Dickenson, Tex.
20	J. E. Morrison	36	2nd. Pump.	M Son—Donald, 211, 6th. St. Port Arthur, Tex.
21	Geo. Krueger	23	Oiler	S Mo—Mrs. Leska M. 690 Mill St. New Braunfels, Tex.
22	Robert L. Murphy	29	Oiler	S Mo—Mrs. R. L. 305 S. 5th. St., Salt Lake City, Utah.

Texas Company vs.

A. Bergman.)
 on Rosen what do you have?
 l for incompetency."
 those entries on there?
 f.
 those entries at the time you
 I paid them off.
 We would like to offer this in

o objection.
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 f this instrument because, first,
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 that these men had anything to
 y or the reason for which they
 red, for which allegedly they have
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 and no predicate has been laid
 nit such an instrument to be in
 rth, that the master has not shown
 ents which may under some cir-
 cums such an instrument in evidence
 native value it may have.

Persons: The objection will be
 e document will be received and
 e, being respondent's Exhibit No.

a the document above re- [2006]
 marked as "Respondent's Exhibit
 identification and was received in

RESPONDENT'S EXHIBIT No. 18

CREW LIST

Vessel S/S "Washington"
 From Port Arthur, Texas.

Sailing Date July 16th.

To Los Piedras, Venezuela, Via Cristobal, C. Z.

NOTE: Crew List Must Be Mailed Before Each Sailing.

No.	Name	Age	Capacity	Citizen or What Country	Married or Single	Name, Relationship and Address of Next of Kin
1	C. B. Johannesen	49	Ch. Mate	U.S.A.	M	Wife— 483 Pine St. Beaumont, Texas
2	Ernst Zihrel	43	2nd.	"	M	Wife— 735 S. Front St. Philadelphia, Pa.
3	M. Corsi	32	3rd.	"	M	Wife— 108 Warren St. Brooklyn, N. Y.
4	Wm. M. Cline	44	Rdo. Opr.	"	M	Wife— 527 W. 19th. St. Houston, Texas.
5	J. A. Evensen	44	Bo's'n.	"	S	None— 290 Procter St. Port Arthur, Tex.
6	Archie C. West	37	Quart.	"	S	Mo—Mrs. A. S. Petersen, California, Mo.
7	Raymond V. Meyers	25	Quart.	"	S	Mo—Mrs. J. A. Ernest, Leconystle, La.
8	Denis Wood	36	Quart.	"	S	Sis—Mrs. R. H. Gerner, 2234 8th. St./Port Arthur, Tex.
9	E. R. Munsell	41	A.B.	"	S	Pa—John, Route #4, Bloomington, Ill.
10	C. E. Bridewell	35	A.B.	"	S	Pa—Elmer, 455 E. Grand, Springfield, Mo.
11	Astor E. Ponz	24	A.B.	"	S	Aunt—Mrs. Elmer Horgots, Cherokee, Ala.
12	Sheldon E. Burns	21	O.S.	"	M	Wife— Bogue Chitto, Miss.
13	F. A. Simons	24	O.S.	"	S	Mo—Mrs. R. Kalamazoo, Texas

No.	Name	Age	Capacity	Citizen of What Country	Married or Single	Name, Relationship and Address of Next of Kin
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23	Harry Mervick	33	Oiler	U.S.A.	S	Fa—James 1623 Eastern Ave. Baltimore, Md.
						Fa—F. C. Brown

Name	Capacity	Date	Reason
Clarence Buckless	Quart.	Jul. 14	Drunk while on duty, unable to stand watch.
F. W. Zinkiewicz	A.B.	" 14	Discharged for incompetency
Gordon Rosen	A.B.	" 14	" "
James Langham	O.S.	" 14	Relieving only
David B. Montgomery	Pumpman	" 13	Trip off
C. C. O'Neal	Messman	" 13	" "
John W. Carr	2nd. Mate	" 13	" "

Promotions and Demotions This Trip

Name	From	To	Date	Remarks
Ernst Zihrul	Quart.	2nd. Mate	Jul. 15	
A. Maselli	2nd Pump	1st Pump	7/14	

G. A. BERGMAN
Master

No.	Name	Age	Capacity	Citizen of What Country	Married or Single	Name, Relationship and Address of Next of Kin
23	Harry Mervick	33	Oiler	U.S.A.	S	Fa—James 1623 Eastern Ave. Baltimore, Md.
24	Donald Giovannia	25	Fireman	"	S	Fa—F. C. Brown Robinson, Me.
25	J. H. Breithaupt	38	Fireman	"	S	Mo—Mrs. Marie Glasco, N. Y.
26	Jack Kane	21	Fireman	"	S	Mo—Mrs. Addie Medical Bldg. Port Arthur, Tex.
27	Irby Wells	35	Wiper	"	S	Sis—Mrs. A. Larsen Box #1848, Sarasota, Fla.
28	Harry Podlinski	24	Wiper	"	S	Mo—Mrs. B. 1596 Mount Ephraim Ave. Camden, N. J.
29	M. Lescoc	59	Steward	"	M	Wife— 3408 Thomas Blvd. Port Arthur, Tex.
30	L. Bush	38	Cook	"	M	Wife— 644 Thomas Blvd. Port Arthur, Tex.
31	Ray M. Dixon	23	Messman	"	S	Uncle—J. W. Richardson 585 Allen Ave. Chillicothe, O.
32	Cecil McDonald	21	Messboy	"	S	Fa—Wm. Sugartown, La.
33	Luther T. Olive	22	Messboy	"	S	Mo—Mrs. L. W. Strong, Ark.
34	Clifford J. Webre	36	Messboy	"	S	Fa—Jess Breux Bridge, La.

Shipped This Trip

Name	Capacity	Date
Raymond V. Meyers	Quart.	Jul. 15
Denis Wood	Quart.	" 15
C. E. Bridewell	A.B.	" 15
Astor E. Poaz	A.B.	" 15
Sheldon E. Burns	O.S.	" 15
J. E. Morrison	2nd. Pump.	" 15
Ray M. Dixon	Messman	" 15

Paid Off Previous Trip (Left Ship)

Name	Capacity	Date	Reason
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(Testimony of G. A. Bergman.)

Trial Examiner Persons: Do you want to substitute a photostat?

Mr. Pipkin: If I may.

Trial Examiner Persons: Surely. That is always permissible. It will be all right to substitute a typewritten copy on this form if it would be more convenient.

Mr. Pipkin: We have a photostat machine. I had planned to get it photostated. [2007]

Trial Examiner Persons: I take it a typewritten copy would serve all purposes, made on the same form, would it not? There is nothing here except the signature that need to be photostated.

Mr. Mandell: The complaining union would have no objection to what copy be put in.

Mr. Pipkin: I believe it would be no more trouble to have it photostated.

Trial Examiner Persons: Very well. You may be better fixed in that regard than we are in some hearings. We frequently have complaints about the difficulty.

Mr. Pipkin: We have a machine here at the plant.

Trial Examiner Persons: Very well.

Q. (By Mr. Pipkin) Captain Bergman, is that a list you customarily make?

A. That is the company's list that I always make up.

Q. What do you do with that list?

(Testimony of G. A. Bergman.)

A. I make it up at every port and mail it to the office.

Q. You make it up at the beginning of each voyage?

A. Just before sailing from every port.

Q. That is your official report as to the crew?

A. Official report of the crew that I take to sea with me.

Q. And an account of what happened to those on last crew list that are not on this one? [2008]

A. And also the crews that are not on the ship.

Q. Captain Bergman, were working rules posted on the "Washington"? A. Yes, sir.

Q. When were they posted?

A. They were posted at the time they were issued, some time last year, I believe it was.

Q. Did you ever observe any union meetings on the "Washington"? A. I never saw one.

Q. Have you ever discharged a man for union activity? A. No, sir.

Q. What has been your treatment toward the union men, the same or different from the way you have treated nonunion men?

A. Every man on the ship is alike to me, whether he is a union man or a nonunion man.

Q. Do you inquire as to whether they are union men?

A. No, sir. It is none of my business what he is.

Q. When did you make up your mind to fire Buckless with reference to your stop over at Claymont?

(Testimony of G. A. Bergman.)

A. After the second mate told me that he did not stand the watch at Claymont, Delaware, my decision was made up.

Q. Do you know whether or not Buckless ever made that watch up? [2009]

A. I don't know.

Q. Do you know whether he made any arrangements for anybody else to stand his watch?

A. I don't think he did; I don't know.

Q. How long after you left Claymont did you reach that decision?

Mr. Martin: I object. This is the fourth time he has been over that. He has already testified that he made up his mind before the ship left Claymont.

Trial Examiner Persons: I have no such remembrance.

Mr. Martin: I will ask the reporter to read it back.

Trial Examiner Persons: Yes, we will ask him to read it back.

(Question and answer read.)

Trial Examiner Persons: I take it we are talking about a different thing. He said he made up his mind after the second mate told him that he didn't stand his watch.

Q. (By Mr. Pipkin) Did you make up your mind after you left Claymont or before?

A. After we left.

Q. How long after?

A. Before we got in the next port.

Mr. Pipkin: That is all.

(Testimony of G. A. Bergman.)

Cross Examination

Q. (By Mr. Martin) Captain Bergman, do you hire men [2010] from time to time in any port where you happen to need a man?

A. I give the order for a man when I need a man.

Q. In what ports?

A. Any port wherever I need a man.

Q. Who do you give orders to to hire a man in any port where you need a man?

A. The representative of The Texas Company.

Q. In that port? A. In any port.

Q. Now from time to time during the 12 years you have been a captain with The Texas Company have you also fired men from time to time in other ports other than Port Arthur?

A. At the final port of discharge. That is the only port wherever I fire a man.

Trial Examiner Persons: Let's have that port of discharge clarified a bit. Is that discharge of the vessel or discharge of the man?

Q. (By Mr. Martin) What do you mean by final port of discharge?

A. By final port of discharge I mean a port where the voyage commenced; when the ship comes back to that port, as specified in the shipping articles. That is the place where I discharge him.

Q. Now, Captain Bergman, when you leave Port Arthur do you customarily or ever leave Port Arthur without a full [2011] crew?

(Testimony of G. A. Bergman.)

A. We always leave with a full crew from Port Arthur.

Q. You always do? A. Yes, sir.

Q. Then if you left Port Arthur with a full crew, and you took on an additional man at some other port, then you would have more than a full crew?

A. I don't take on any additional men in outside ports, unless some members of the crew leave the ship in the outside ports during the voyage.

Q. I see. Now is it your testimony that you never cause any of the men to leave the crew at outside ports? A. Absolutely, no.

Trial Examiner Persons: I think that is not quite clear. When we hear it it is clear, but it might not be when seen in writing. Read the question and answer, please.

(Question and answer read.)

Q. Do you mean that is not your testimony, or that is not your practice, that that is not what you do?

A. If a man signs on for a voyage, to make a voyage, he has to stay until the voyage is complete.

Q. Captain, at this time have you any independent recollection that the articles of June 1 and June 22 were in fact signed before the boat left the dock here at Port Arthur?

A. Absolutely, signed every man before the ship left the [2012] dock.

Q. You mean that is the custom?

(Testimony of G. A. Bergman.)

A. That is the custom, yes, sir.

Q. Can you focus on these particular times and say definitely that happened, because there has been some testimony in this record that ships have left before articles have been signed.

A. I don't know what they do on other ships. On my ship I sign on every man before a ship moves away from the dock.

Q. Now what ship are you attached to now? What is your ship now?

A. I am not on any ship. I am on shore now.

Q. Are you getting paid now?

Mr. Pipkin: I believe he didn't get your meaning. He is just here for the purpose of this trial.

Trial Examiner Persons: You still have a job?

A. I am on pay, so the owners told me.

Q. Pardon?

A. I am on pay, so the owners told me; subsistence as well.

Q. When you get through with this job what will you do, go back to the "Washington"?

A. Well that is up to the owners of the ship what they will do with me.

Mr. Martin: What was the last answer before this, Mr. Reporter? [2013]

(Answer read.)

Trial Examiner Persons: Where is the "Washington" now?

A. Somewhere out in the Atlantic going north.

Mr. Pipkin: Your Honor, there is a telephone call. Will you excuse me?

(Testimony of G. A. Bergman.)

Trial Examiner Persons: Yes, we will recess until Mr. Pipkin gets back.

(Short recess.)

Trial Examiner Persons: I think we are ready, Mr. Martin.

Q. (By Mr. Martin) Captain Bergman, did you have any complaints with respect to Mr. Buckless' services as quartermaster?

A. The mate on watch complained about his standing watches.

Q. Well did he steer the ship all right?

A. No, he was not a good quartermaster.

Q. He was not? A. No.

Q. When did you first discover that.

A. Well the first time he came on board. Gradually he commenced to get worse.

Q. When was that?

A. The first voyage he made. [2014]

Q. You mean June 2, 1938? A. Yes.

Q. How did he get worse?

A. Well, he steered all right the first voyage going out, and gradually his steering became worse.

Q. You mean by gradually that he was gradually get more and more off the course?

A. He course was not as good as it was the first trip leaving Port Arthur.

Q. You mean he steered a straight course during the voyage out of Port Arthur?

A. His steering was very good the first trip, the first voyage.

(Testimony of G. A. Bergman.)

Q. Then all of a sudden he got worse?

A. Not all of a sudden.

Q. You mean gradually got worse?

A. Gradually, paid less and less attention to his steering.

Q. Paid less and less attention to his steering, is that your testimony? A. Yes, sir.

Q. Now when did you first notice that, Captain?

A. I first noticed that after the second trip of the first voyage.

Q. After the second trip of the first voyage?

A. Yes, sir, during the second trip of the first voyage, I mean. [2015]

Trial Examiner Persons: You mean the return voyage?

A. The return trip. It was the second trip.

Q. Now where did you go to on the first voyage?

A. Went to Bayonne, New Jersey.

Q. And then returned to Port Arthur?

A. Yes, she returned into Port Arthur.

Q. Now, you didn't fire Mr. Buckless at the close of that trip, did you? A. No, I didn't.

Q. That is, you signed new articles for another trip? A. Yes, sir.

Q. Despite the fact that he was steering off the course?

A. Well, I wanted to give the man another chance.

Q. I see. Now, had he been a good quarter-

(Testimony of G. A. Bergman.)

master while he was on the "Washington" in February and March, 1937?

A. I don't recollect just how he was then.

Q. But he was good enough so you took him back on in 1938, is that correct? A. Yes.

Q. And you took him on in 1938 despite the fact that he had just been fired two months previously from the SS "Nevada" for being an habitual drunkard, is that correct?

A. I didn't know that. I was not on the "Nevada". I am just on the "Washington".

Q. Now when did the mate first complain to you concerning [2016] Mr. Buckless?

A. The first complaint he made to me was after leaving Claymont, Delaware.

Q. Did anybody else complain to you concerning Mr. Buckless or any of his work on the boat prior to the time the boat left Claymont, Delaware, on or about July 5, 1938?

A. I don't recollect that.

Q. I beg your pardon.

A. I don't recollect that.

Q. That is, you don't believe anybody did complain? A. I don't remember.

Q. What are your hours on the boat when she is at sea? A. My hours?

Q. Yes.

A. My hours are twenty-four hours a day.

Q. Do you have a normal daily routine, that you are on the bridge certain hours, or in your office certain hours, or sleeping certain hours?

(Testimony of G. A. Bergman.)

A. Well, if the weather permits I sleep all night.

Q. What hours, roughly?

A. Say between 10:00 o'clock in the evening until about 5:30 in the morning.

Q. Now do you customarily spend any certain time on the bridge?

A. Yes, I am on the bridge every morning and evening. [2017]

Q. When are you on in the evening?

A. Say from about 5:00 o'clock until about 8:00, or 7:30.

Q. When are you on in the morning?

A. From 6:00 to 8:00.

Q. Now were you ever on the bridge between 12:00 noon and 4:00 p.m., and 12:00 midnight and 4:00 a.m.?

A. Yes, sir, sometimes I come on the bridge around 2:30 in the afternoon.

Q. But as a rule you would not be?

A. No, as a rule I don't.

Q. I see. And then how long would you stay on the bridge when you would go up there?

A. When, in the afternoon?

Q. In the afternoon.

A. I might take a sight. If I take a sight, I say about half an hour. Sometimes I change the course, and then I only stay a few minutes.

Q. Now which mate has the 12:00 to 4:00 shift on the "Washington"? A. Second mate.

(Testimony of G. A. Bergman.)

Q. Johnny Carr? A. That is him.

Q. Did he have that watch during June and July, 1938?

A. Yes. He always had that watch.

Q. Now prior to the time you left Claymont, Delaware, mid [2018] way on that second trip, had Johnny Carr ever mentioned to you that Quartermaster Buckless was getting off the course?

A. Yes, he did several times.

Q. I thought you said a minute ago that nobody complained to you concerning Buckless' work on the ship until you pulled out of Claymont that morning?

A. Well, I understood you to say that was in port.

Q. I beg your pardon.

A. You said that was in port. I understood you to mean being in port.

Q. Now when did Johnny Carr first complain?

A. He first complained of Buckless' steering.

Q. When was that? A. Out at sea.

Q. First trip? A. Yes.

Q. Did you warn Buckless?

A. No, I didn't say anything to Buckless. I told the second mate to watch his steering.

Q. Now you didn't see Buckless the night he missed his watch, did you?

A. No, I didn't see him. I was sleeping.

Q. And he stood his watch the following morning, didn't he, or rather the following day, from 12:00 noon to 4:00 p.m.?

(Testimony of G. A. Bergman.)

A. Yes, at sea. [2019]

Q. After leaving Claymont?

A. Yes, at sea, after leaving Claymont.

Q. Captain Bergman, at Claymont that trip were you loading or unloading?

A. Unloading.

Q. When did you finish unloading?

A. Between midnight and 4:00 a.m. that morning.

Q. What time?

A. I don't know the exact minute. I couldn't tell you the exact time.

Q. You can't tell me the exact time?

A. No. I don't remember the exact time.

Q. Now when did you next see Mr. Buckless yourself after this night, July 4?

A. The following afternoon, after we left the dock.

Q. What time the next day did you have your discussion with Mr. Carr?

A. He reported Buckless' condition to me after 8:00 o'clock in the morning. He reported Buckless' condition to me after we left the dock.

Q. What time did the boat leave port?

A. We left some time after 4:00 in the morning.

Q. That is between 4:00 and 8:00?

A. Between 4:00 and 8:00, or between 4:00 and 5:00, I believe it was. [2020]

Q. Did you talk the Buckless case over with

(Testimony of G. A. Bergman.)

Mr. Johannesen?

A. Yes, I talked to him about it.

Q. When?

A. After we left the Delaware River.

Q. That same morning?

A. Same day, I believe it was.

Q. And now did you at that time speak to Mr. Buckless about the matter?

A. No, I didn't talk to him about it at all.

Q. Even though you had made up your mind to fire him? A. Yes.

Q. To your knowledge, did either the first or second mate talk to Buckless at that time about the matter?

A. I don't know anything about that.

Q. Now why did you fire Buckless?

A. For being drunk and an unreliable quartermaster.

Q. Those are the only reasons, are they?

A. For not being a good quartermaster there at sea.

Q. You didn't fire him for missing the watch then, did you?

A. Yes, I will consider it for missing watch, being drunk, unable to stand watch, and not being a good quartermaster at sea.

Q. Now, you never warned him about any of those things?

A. No. I thought it was useless to warn a man like him.

(Testimony of G. A. Bergman.)

Q. Captain, do sailors customarily do some drinking in port? [2021]

A. Well, all the men that take a drink, more or less, those that drink.

Q. Some of them get pretty drunk once in a while?

A. Yes, some do.

Q. Do you always fire them for it?

A. No, sir; give them another chance. [2022]

Q. Now when did the mate first complain that Zienkiewicz was slacking in his work?

A. The first voyage he made.

Q. That is, during the June 2 to June 21 voyage?

A. The first voyage.

Q. Who complained, the first mate or second?

A. The first mate.

Q. What did he say?

A. He said the man didn't do enough work, and he didn't do the work right.

Q. Did you make up your mind to fire him?

A. No. I told the mate that he ought to give him a chance, and let him make another trip and see how he worked out.

Q. So you let him make another trip?

A. Sure.

Q. And when did the mate first complain concerning Rosen?

A. The same time, first voyage.

Q. But you gave him another chance too?

A. I told him to keep him if he possibly could keep him.

(Testimony of G. A. Bergman.)

Q. When did you make up your mind to fire Zinkiewicz and Rosen?

A. That was on the last trip of the second voyage, after they didn't make good.

Q. Well, did you have a conversation with somebody about whether you would fire those two men?
[2023]

A. Well, I had a conversation with the chief mate, the only man I would have a conversation with about sailors' work.

Q. Will you please relate to the Examiner what was said during that conversation?

Trial Examiner Persons: What did you say, and what did the first mate say, about those two men?

A. He told me those two men were lagging in their work, and that I should get rid of them, and not sign them on again after we arrived at Port Arthur. So I told him: "You have given them a chance to make the second voyage, and they didn't make good, and if you don't want them, let them go." That is what I told the mate.

Q. Now did you advise Zinkiewicz and Rosen then that you were going to let them go at the end of that trip?

A. No, sir, I didn't say anything to them.

Q. Did you tell the mate to tell them?

A. Yes, I told the mate. The mate did the discharging, after we decided what to do with the men.

Q. Did the mate ever cite to you, ever give you

(Testimony of G. A. Bergman.)

any specific examples of where they were slow or slacking in their work?

A. Well, in the general work. He didn't tell me exactly at what work.

Q. Did you make any independent investigation yourself in the matter?

A. Well, I watched those men from the bridge after the mate [2024] made his report to me, and I saw what they were for myself.

Q. What did you see?

A. I saw that they were men that I would not carry myself if I was the mate on that ship.

Mr. Martin: Read that answer, please.

(Answer read.)

Q. Do you customarily make out this crew list for the "Washington"?

A. Yes, that is my work.

Q. You do that yourself?

A. A man on there types it for me, and I make it out in pencil.

Q. Who types it for you?

A. I do it myself.

Q. And who else does?

A. Well, the second mate. He has got a typewriter.

Q. But you supply that handwritten draft of what shall go on the typewritten list?

A. I make all the corrections, and they type it after that.

(Testimony of G. A. Bergman.)

Q. Is that the practice on most Texas Company boats?

A. I don't know anything about what they do on the other ships. I just know what we do on the "Washington".

Q. Have you ever been captain of any other Texas Company boat than the SS "Washington"?

A. Yes. I made a trip on the "Reaper". [2025]

Q. What was the practice on the "Reaper"?

A. Exactly the same as I practice now on the "Washington".

Q. Where did you go from Claymont, Delaware, on that trip?

A. Went to Amesville, Louisiana.

Q. Where did the ship go from there?

A. To Port Arthur, Texas.

Q. Who keeps the rough log on your boat?

A. The three mates.

Q. Do they record in the log book when any of the seamen are incompetent?

A. No, they don't do that in the rough log book.

Q. Do they in the smooth log? A. No.

Q. You keep the smooth log?

A. No, the chief mate keeps the smooth log.

Q. Do you record in either of the log books when a quartermaster misses watch because he is drunken? A. No, we didn't do it at that time.

Q. You didn't do it at that time?

A. No, sir.

(Testimony of G. A. Bergman.)

Q. Is it your testimony that there were no union meetings aboard your boat?

A. I didn't know of any union meetings on the ship.

Q. Do you customarily spend much time in the forecastle? [2026]

A. I go inspecting quarters on the ship once a day at sea.

Q. What time?

A. Between the hours of 9:00 and 10:00 o'clock in the morning.

Q. You are not back there in the evening much?

A. Never do.

Mr. Martin: That is all.

Trial Examiner Persons: Do you have any questions, Mr. Mandell?

Mr. Mandell: No, Mr. Examiner.

Trial Examiner Persons: I would like to ask the captain some questions. I am afraid they are based too much on the ignorance of the Trial Examiner, but I have to ask them.

Q. Captain Bergman, after you finish a trip and the crew works out its last day at 5:00 o'clock then what happens? Who releases them; how do they go ashore?

A. On arrival at the final port of discharge at 5:00 p. m. the articles of agreement expire, and the crew is released from the agreement, and they can go where they please.

Q. Do you expect them back?

(Testimony of G. A. Bergman.)

A. I will say the owner of the ship is at liberty either not to hire them or to rehire them.

Q. That goes for the officers as well as the unlicensed personnel? A. The entire crew. [2027]

Q. Does anyone say to the chief mate, come back when we sail again?

A. Well, he is at liberty to come back or not to come back. That is entirely up to the master.

Q. If you don't say anything to him about not coming back he just comes back when you sail again?

A. Yes, and if I want him to come back I sign him on for the next voyage; and if I don't want him to come back I don't rehire him, and don't sign articles again.

Q. If you didn't want the chief mate to come back would you tell him not to come back?

A. I would tell him, I don't rehire you; I don't want you any more.

Q. You wouldn't wait until he came back ready to sail?

A. Well, that evening, at the final port of discharge, I tell him, Mister, you are finished; I don't want you any more.

Q. If you didn't say that to him, and he didn't say anything to you about not coming back, it would be understood he was to be first mate the next voyage? A. Yes, sir.

Q. The same is true of all the men?

A. Yes, sir.

(Testimony of G. A. Bergman.)

Q. Of the engine room?

A. Every one that signed articles.

Q. All of the crew? [2028]

A. Every one under articles.

Q. If they are not told they are fired they are understood to be going on the next trip?

A. That is the precedent.

Q. That is correct? A. That is correct.

Q. How do they find out when they are expected to report back? A. Those to be hired? [2029]

Q. No, I mean the crew generally. How are they notified when the ship is to sail again?

A. Put up on the blackboard at the gangway that the ship sails at such and such a time in the morning.

Q. With the hour and the day? A. Yes, sir.

Q. And they are expected to report ready for duty?

A. Yes, sir, those that have been signed on.

Q. Do they do any duty before they are signed on? A. I don't understand.

Q. You put up a notice on the blackboard you are going to sail at 5:00 a. m. on July 10?

A. Yes, sir.

Q. And they come on ready for duty at 5:00 a. m. on July 10?

A. Yes, those that have been signed on on the day before.

Q. You sign them on the day before the ship sails?

(Testimony of G. A. Bergman.)

A. Yes, I sign them usually the day before the ship sails, if the ship sails early in the morning. If the ship sails in the afternoon I sign them on that day.

Q. Do they do any duty until they are signed on?
A. Yes, they sign the articles.

Q. First, and then they do work that is to be done?
A. Yes, sir.

Q. They do no work at all until they are signed on? [2030]

A. No, they don't turn to to do any work until they are signed on.

Q. They don't turn to until they are signed on?

A. No, sir.

Q. If you are sailing at 5:00 a. m. do they spend the previous night on board?

A. Well some go ashore, and some go on board.

Q. While they are on board that night are they members of your crew?

A. If they are signed on.

Q. If not, they are not, that is right?

A. That is right.

Q. You have a crew of about how many, Captain?
A. Thirty-five, including myself.

Q. In the last year about how many of the 35 have been changed?

A. Well I couldn't tell you the number.

Q. Would it be many?

A. It would not be so many.

(Testimony of G. A. Bergman.)

Q. Half a dozen? I don't mean exactly, but in the course of a year about how many new men would you have on your ship?

A. Say about half a dozen; between half a dozen and a dozen.

Q. Out of 35?

A. Some go, and some come back again. [2031]

Q. I mean assuming those that were changed or fired. They might be sick, and there might be various things that happened in a crew of 35?

A. Yes, sir.

Q. Captain, in your 38 years at sea you have seen a good many changes on ships?

A. Yes, I have seen great changes.

Q. The work is easier?

A. Well I couldn't say that.

Q. I don't mean for the master. I mean for the licensed and unlicensed crew.

A. When I went before the mast I worked hard, and I had good times, working 12 hours a day, and sometimes 14 and 16.

Q. Now the rule seems to be 8 hours a day?

A. Well I don't see that they have any better times.

Q. They work less? A. They work less.

Q. The food is better?

A. About a million per cent.

Q. Quarters are better? A. Yes, sir.

Q. Do you have three quartermasters where you used to have two? A. Yes.

(Testimony of G. A. Bergman.)

Q. It has always been customary on shipboard if the crew [2032] have complaints to talk to the master about them? A. Yes.

Q. This business of having the crew meet is not new?

A. That is something new that I heard about.

Q. In the old days of the sailing ships didn't the crew, if they had a complaint about the food, send a committee to the captain?

A. No, we didn't do that.

Q. What did you do?

A. The way we did on the sailing ships, if there was any complaint to make about the food, or anything else, on English ships where I used to sail, the entire crew went up to see the captain.

Q. The crew went as a body? A. As a body.

Q. And it is in a sense the duty of the captain to listen to the crew?

A. One man could speak up.

Q. You had a spokesman?

A. One man usually. They all can't speak at the same time.

Q. Did you elect a man to speak up?

A. No, sir; just one man stepped out, and he spoke to the captain what he had to say.

Q. As we say today, some man stuck his neck out? A. That man spoke out. [2033]

Q. It was the duty of the captain to listen to the crew? A. Yes, sir; always did.

(Testimony of G. A. Bergman.)

Q. What makes it the duty of the captain to listen to these complaints of the crew?

A. Under American law it is the law. It says in the articles of agreement that any member of the crew that feels aggrieved in any way at all, he presents his grievances to the master, and he shall take proper steps to remedy the complaint.

Q. Does it also say he shall listen to the complaints? A. Absolutely.

Q. The same rule for complaints about anything else, about quarters? A. Yes, sir.

Q. Or overtime? A. Any complaints.

Q. Would you just explain for me, because I have been reading this record and I am not clear in my mind, what constitutes overtime on your ship, the "Washington"? When does a man have a right to claim overtime?

A. A man has a right to claim overtime for any time he works outside of regular schedules.

Q. On the voyage that means 8 hours a day, two watches of 4 hours? A. Yes, sir. [2034]

Q. For seven days?

A. At sea, anything over 8 hour watches, 8 hours out of 24 hours; and in port any time over 8 hours.

Q. At sea do the watches stand for Sunday just the same as any other day?

A. At sea the crew doesn't do any unnecessary work outside of navigating the ship, such as steering, keeping lookouts and making inspections, and so forth.

(Testimony of G. A. Bergman.)

Q. If they have more than that, that is overtime?

A. If they work Saturday afternoons and Sundays, outside of the regular navigating of the ship, they get overtime.

Q. I suppose they rotate in the necessary work on Sundays?

A. Oh yes, they stand regular watches.

Q. There is something in the record about cleaning tanks. They get overtime for cleaning tanks?

A. Yes, because the regulation is that any man that cleans a tank, goes down in the tank and picks up rust from the bottom and hoists it out of the tank, he gets overtime, besides his regular pay, on regular working time.

Q. Even though he is working on his regular 8 hours?

A. Yes. That is something extra. That is 75 cents an hour extra over his regular pay.

Q. Now who keeps a record of this overtime, the chief mate? A. The chief mate. [2035]

Q. If there is a dispute over overtime, what is the procedure?

A. The chief mate will come to me with the amount, and I look up the company's working rules and try to interpret them to the best of my ability, and make a decision. And then of course if the mate and the man and I agree we put it down in black and white. [2036]

(Testimony of G. A. Bergman.)

Q. Suppose a man is not satisfied after you make your decision?

A. They usually are on that ship.

Q. I grant you that, but suppose on some other ship the man is not satisfied, what he next do?

A. Well, in that case, I should say if he is not satisfied with my decision and the mate's decision he can make a complaint to the port superintendent.

Q. To the company's port superintendent?

A. Yes, sir.

Q. That means Captain Rooney or Captain Hand, does it?

A. Any man above me and the mate.

Q. I see. In your opinion, Captain Bergman, how do unions on shipboard fit in? A. Sir?

Q. In your opinion, how unions on shipboard fit in?

A. I don't know anything about it, because I never had any experience with unions on Texas Company ships.

Q. Did anybody ever come to you on the "Washington" and say, we have been selected by the crew as delegates to speak to you about this complaint?

A. Yes, one man did.

Q. Who was that? A. That was Rosen.

Q. What did you do? [2037]

A. Well, I told him: "I don't know whether you are a delegate or not, but you are a member of the crew, and as such I listen to your grievances, and will any complaint that you may have."

(Testimony of G. A. Bergman.)

Q. What was the complaint on that occasion?

A. On that occasion it was a complaint that some screens were missing on the doors aft, screen doors; and that screens in the portholes were, and screens above the doors were busted, and buckets in the bathroom. So of course I told him that when we got back to Port Arthur I would see what we could do about it. So I wrote a letter to Mr. Hand, stating the deficiencies that should be corrected for the crew's quarters, and when we arrived at Port Arthur, Mr. Hand had them remedied.

Q. The complaints were justified?

A. The complaints were justified and corrected.

Q. Did you get the buckets they wanted?

A. We had twelve buckets, and screens made and put on the portholes. The carpenters came on board and renewed screens on some of the screen doors where they were busted. Anyhow, the complaints Rosen presented to me were corrected when we reached Port Arthur.

Q. Captain, your boat is not very large?

A. No, just a medium size tanker.

Q. How long? [2038] A. 425 feet.

Q. And a crew of only 35 men?

A. Yes, sir.

Q. And you all live aboard the full length of the voyage? A. Yes, sir.

Q. You know all that happens on the boat, you know all about what happens, don't you?

(Testimony of G. A. Bergman.)

A. Anything that the officers in charge report to me.

Q. You have capable officers?

A. Pretty good men.

Q. They report anything that you should know to you?

A. Anything that is of interest to me they report to me.

Q. Would a union on board be interesting to you?

A. A union, I have nothing to do with. As I said before, a man is a man to me, whether a union man or a non-union man.

Q. Rosen came to you and said he was delegate from a union meeting?

A. Yes, he came to me and told me that he was selected delegate at a meeting, which I didn't see.

Q. Was there such a meeting on your ship?

A. I didn't see any meeting.

Q. Was there such a meeting on your ship, Captain? A. I didn't see any meeting myself.

Q. But was there such a meeting on your ship?

A. Rosen told me there was one. [2039]

Q. Was there such a meeting?

Q. (By Mr. Pipkin) Do you know of such a meeting?

A. No, I didn't know it was going on until Rosen came to me.

Q. (By Trial Examiner Persons) Do you think there was such a meeting, Captain?

(Testimony of G. A. Bergman.)

A. Yes, I have heard about meetings.

Q. On that voyage?

A. Yes. As a matter of fact, when I walked around in searching the ship in the morning I saw a sign up out of the galley there that a meeting was supposed to be held.

Q. Giving the hour?

A. Some time in the evening. I don't recollect the hour.

Q. Did anybody report to you that a meeting was held on that evening?

A. No, nobody told me anything before Rosen came along.

Q. During that voyage did you get any reports from any source of union meetings being held on board?

A. No, unless I saw the notice stuck up myself.

Q. Was the notice signed by the secretary or the chairman or something like that?

A. I don't remember whether it was signed or not.

Q. What did it say?

A. That a meeting will be held at such and such a time, and that date. I couldn't tell you the dates or the times. [2040]

Q. Give the place?

A. In the crew's mess room.

Q. Wasn't there any authority signed to it, secretary, chairman, delegate or something of the sort?

(Testimony of G. A. Bergman.)

A. I couldn't tell you that. I can't remember that.

Q. Is it your best recollection there was no name below the notice?

A. I don't remember whether I saw a name.

Q. Did you see this notice only on one occasion?

A. I saw it on two occasions, once outside of the galley there, and once in the crew's mess room.

Q. Were those meetings held, Captain?

A. I never saw them held myself. I just say Rosen told me that he held a meeting.

Q. I know, Captain, but you didn't see this quartermaster drunk in his bunk there?

A. I have got to take the mate's report.

Q. Was he drunk in his bunk?

A. The second mate told me that.

Q. Was he drunk in his bunk?

A. That is what the second mate told me.

Q. On that particular voyage when you saw this notice of union meetings, Captain, how many union members had you aboard?

A. That is something I couldn't tell you [2041]

Q. Did you have any?

A. I couldn't tell you, because I didn't inquire about anybody's affiliations on the ship.

Q. You had some, did you not?

A. I believe there was some, but I don't know who was who.

Q. Some union member put up two union notices that you saw?

(Testimony of G. A. Bergman.)

A. Somebody put it up. I don't know who it was.

Q. Did you recognize the handwriting?

A. No.

Q. Was it a handwritten notice?

A. Hand printed.

Q. Printed? A. Hand printed.

Q. Would you say, Captain, that a union on shipboard could function successfully, with benefit to the crew and the ship and the captain?

A. I couldn't tell you, because I haven't had any experience.

Q. Would you be interested somewhat to have such an experience?

A. Well, that is entirely up to the owners to decide what they shall have on their ships.

Q. Have the owners given you instructions about unions on your ships?

A. No, sir, they never have said anything about it.

Q. Did they give you any instructions about unions on your [2042] ship? A. No, sir.

Q. Did they instruct you, as captain of the "Washington", that you should not discriminate between union and non-union?

A. I have instructions that every man, union or non-union, should be treated alike on the company ships. [2043]

Q. Do you have any instructions as to the I. S. U. and the N. M. U.? A. None at all.

(Testimony of G. A. Bergman.)

Q. I think that is the International Seamen's Union? A. Yes, sir.

Q. And the other union is the National Maritime Union? A. That is what I heard, two factions.

Q. Did you ever get any instructions from the company and its officials naming those two unions?

A. No, sir, not a word.

Trial Examiner Persons: Thank you, Captain. Anything further?

Redirect Examination

Q. (By Mr. Pipkin) Captain Bergman, did you object to union meetings, if there were any held?

A. I never objected to them on a ship, because I remain absolutely neutral in every respect.

Q. You have stated that you did not fire a man for getting drunk; that you gave him a second chance. Is there a difference in your mind between getting drunk and not missing a watch and getting drunk and missing a watch? Is one more serious than the other?

A. Well, I always have been in the habit of overlooking drunks who have been drinking on their own time, as long as they report to me on duty in sober condition. On his time [2044] off he can do what he pleases, get drunk, jump over the sides, or anything he wants.

Q. Is missing a watch a pretty serious thing on a ship?

(Testimony of G. A. Bergman.)

A. It puts that much more work on the other fellow.

Q. Did anybody have to double up on this particular occasion?

A. No, the second mate did the work himself then.

Q. Do you recall whether the quartermaster on from 8:00 to 12:00 stayed on from 12:00 to 4:00? Did the quartermaster Zihrul who was on 8:00 to 12:00 stay on from 8:00 to 4:00?

A. Yes, the second mate reported that Zihrul stood a part of Buckless' watch on that particular night.

Q. Did you see Buckless the next morning when you cast off? A. No, I didn't.

Q. Had you ever seen him on deck before on either of those voyages?

A. Yes, I saw him around decks when I came on board in the afternoon or morning. Whenever I saw him on deck, on watch, he was always sitting down on something, and when he saw me coming he would jump to his feet.

Q. Did you ever see him come aboard under the influence of liquor?

A. No, I have not seen him, because he always happened to do that at a time when I was not around.

Q. Captain, did you ever receive a report from the mate as [2045] to the degrees Buckless would be off on his steering?

(Testimony of G. A. Bergman.)

A. Well, the second mate told me that he was off the course sometimes 5 or 10 degrees, which I saw from the bridge.

Q. Did you ever notice him off the course?

A. I saw the wake of the ship.

Q. You set the course?

A. I told the mate to set the course. I didn't set it myself.

Trial Examiner Persons: Do you mean 5 degrees? A. 5 or more degrees.

Q. Five points? A. 5 degrees.

Q. (By Mr. Pipkin) Do you allow smoking on the bridge? A. No, sir.

Q. Did you ever have a report from the mate as to Buckless smoking on the bridge?

A. I have seen matches outside of the wheel-house door, and I asked the second mate where these matches came from. They were burned out matches. And he said he didn't know.

Q. What was this, the 4:00 to 8:00 watch?

A. Well, I just saw them in the morning when I went up there at 6:00 o'clock; and the second mate came up at 6:00 o'clock to wind the chronometer, and I asked him where the matches came from outside of the wheel-house door. And I told him it was his watch, and nobody could smoke, and he said [2046] he would see who was smoking around and throwing those matches around.

Q. You don't have a regular watch, do you, Captain?

(Testimony of G. A. Bergman.)

A. My watch is every watch.

Q. You are free to go and come as you please?

A. Yes. My watch is twenty-four hours.

Q. If you want to go up on the bridge in the middle of the night that is your business?

A. Any time.

Q. Do you ever come up and go up on the bridge at night?

A. Sometimes, when I can't sleep, weather or something like that, I go up on the bridge and look around.

Q. Do you take a turn around the deck before you go to bed?

A. No, I never go down on the main deck unless I have to for something.

Mr. Pipkin: I believe that is all.

Mr. Williams: Will your Honor indulge us just a moment? I think we are about through.

(Short recess.)

Mr. Pipkin: I believe that is all.

Trial Examiner Persons: Anything further?

[2047]

Recross Examination

Q. (By Mr. Martin) Captain, do you know of other instances on your boat where a man has gotten somebody else to stand his watch for him without your permission?

A. No, I don't know of any instances. I never allow a man to stand anybody's watch unless he gets permission from the chief mate.

(Testimony of G. A. Bergman.)

Q. Or yourself?

A. The chief mate; not myself.

Q. Did you ever fire anybody for letting some one else take his watch without permission of the chief mate?

A. I don't recollect that I have ever done it.

Q. You don't remember of ever doing it?

A. I don't remember.

Q. Is it customary on Texas Company ships, if you know, to discharge men who get others to stand their watch for them without asking permission from the chief mate?

A. Well I don't know anything about other Texas Company ships. I only know about the "Washington."

Q. Did you yourself ever fire a man for that reason?

A. I don't recollect.

Q. Captain, after the boat has arrived in Port Arthur at the end of one voyage, and you have not signed articles on for the new voyage, do you let the same men stay on board during the night?

[2048]

A. Yes, if they elect to stay there they can stay overnight.

Q. Do you feed them their breakfast in the morning?

A. Well that is something we are not particular about. If they want to have a meal they can eat. There is always plenty of food left.

Q. Is that charity?

(Testimony of G. A. Bergman.)

A. Well people come on board and eat meals regularly. I don't know who they are, in the mess room, in the officers' mess. We don't object to a sailor having a meal.

Q. It is customary for men to have their meals whether they have signed their articles or not?

A. Sure, there is plenty of food there all the time.

Q. And you don't eject them from the boat and not allow them to sleep there that night?

A. No, I don't eject them. If they want to sleep they can stay there that night.

Q. And you have never had any instructions from any officers of the company to treat those men in any other manner than you say?

A. I have got instructions to treat my men with the best consideration; to give them the best treatment I can.

Q. And so you do give your men the best treatment? A. I do, the best I can.

Q. Even though they have not signed articles for the next [2049] trip, is that right?

A. Absolutely.

Mr. Martin: That is all.

Q. (By Mr. Mandell) Captain Bergman, let me ask you one or two questions, please. Now it is true, is it not, Captain, that seamen when they are ashore, especially in their home port, they will get drunk a little bit, won't they? It is true seamen in their home port, they will get drunk?

(Testimony of G. A. Bergman.)

A. Well no doubt, yes, those that take a drink.

Q. You have seen while aboard the steamship "Washington" a seaman come back aboard pretty well organized, from shore?

A. How organized?

Trial Examiner Persons: I was just going to suggest this record goes to Washington.

Mr. Mandell: I was going to clarify it.

Q. They come back to the vessel pretty drunk?

A. Well sometimes you can notice it on them, and sometimes you can't.

Q. Sometimes a member of the crew, and sometimes some of the officers?

A. Every man who drinks. Sometimes you can notice it on a man, and sometimes you can't.

Q. As a matter of fact, have you ever seen either an officer or a member of the crew aboard the steamship "Washington" coming back to the ship drunk? [2050]

A. Yes, I have seen men coming back drunk to that ship during the years I have been aboard.

Q. Captain Bergman, during your years of experience you have seen men come back so drunk they were unable to stand their watch?

A. Yes, I have seen that too.

Q. And then they go to their bunk and sleep it off?

A. Yes. Nobody bothers them, provided they don't have to come on deck to stand their watch.

Q. And when they are too drunk to stand their

(Testimony of G. A. Bergman.)

watch and they go to sleep that off, some one else takes their place on watch, you have seen that?

A. Well we have got to have a man on deck to do the work.

Q. Have you seen that done?

A. Yes, I have seen that done.

Q. And have you fired every man who missed his watch on the steamship "Washington" because of being drunk?

A. If he carries that on, I fire him.

Q. If a man misses one watch because he was drunk, and somebody else takes his place, do you fire every man who does that?

A. If he repeats that, I do.

Q. If he does it once you don't fire him?

A. Only once, no.

Q. If he does it twice you don't fire him? [2051]

A. I fire him if he does it twice.

Q. Generally, if you think he makes it a habit, you fire him? A. Yes, a habit, yes.

Q. That is right?

A. I use my own judgment along that line.

Q. Now, Captain, when a vessel comes into Port Arthur it loads down here, does it not?

A. It does.

Q. It takes 6 to 8 hours to load an average cargo?

A. Sometimes.

Q. Of course you don't spend much time in port? The minute you load your ship you are out to sea just as quick as you can? A. Yes.

(Testimony of G. A. Bergman.)

Q. Correct?

A. As soon as we are loaded, we don't go out right away.

Q. Do you stay very long afterward?

A. We might stay as much as 8 hours after that.

Q. After the vessel is loaded?

A. Absolutely.

Q. For what purpose?

A. Waiting for daylight.

Q. Suppose you come in at 6:00 o'clock in the morning, and you get started, and you load, and you are fully loaded, say [2052] at 12:00 o'clock noon, what time do you start leaving?

A. Well, if everything is in hand, and I get orders to go, then I go.

Q. Generally you don't stay more than 6 to 10 hours, is that correct?

A. In port?

Q. Yes.

A. We stay sometimes a couple of days.

Q. Do you know what the word "generally" means?

A. Yes.

Q. Generally how long do you stay?

A. Usually 24 hours.

Q. Do you stay as much as 24 hours?

A. Yes, sir.

Q. And when the vessel comes in of course the first thing you do is tie it up, move it to the dock?

A. Yes, sir.

Q. How do you break watches after that?

A. Usually break the sailors' watches.

(Testimony of G. A. Bergman.)

Q. You break the sailors' watches?

A. Yes, sir.

Q. The quartermaster stands——

A. A regular watch.

Q. The A. B.'s and ordinary seamen do day work while the vessel is in port? A. Yes.

[2053]

Q. They know that, the men who have been on your ship say a month, they know that, don't they? That is pretty well known aboard the ship?

A. The quartermasters don't stand any night watch in Port Arthur.

Q. I understand that, but what I want to know, who gives the men orders to break watch and do day work just the minute the vessel is tied up?

A. The chief mate.

Q. Now just tell us, please, what you do after the vessel is tied up, just what the procedure is that you follow?

A. After the vessel is tied up they connect the hose and commence to load the cargo, if the cargo is ready.

Q. That is right. And the chief mate gives orders to the A.B.'s and ordinary seamen to take their day work?

A. Whatever he wants them to do, he gives them orders.

Q. And the quartermaster stands his regular watch?

A. Just until 4:00 in the afternoon.

Q. And some men, A.B.'s and ordinary seamen,

(Testimony of G. A. Bergman.)

when their watch is finished, they go ashore?

A. Yes, when their time is up they go ashore.

Q. That is right. What time do they sign back on?

A. If the ship don't go out before afternoon the next day I sign them on the next morning.

Q. The next morning? [2054]

A. Yes, sir.

Q. And they come back naturally to be signed on, is that right? A. Yes.

Q. Some of them don't even go ashore?

A. Most of them go ashore.

Q. That is right? A. Yes, sir.

Q. Some of them don't?

A. That is right.

Q. And generally you don't sign them on until the following day, is that correct?

A. Yes, if we go out late in the afternoon.

Q. Now those people who remain aboard the ship working, they don't quit working until you sign them on again? They go ahead and do their regular work, don't they? A. In Port Arthur?

Q. Yes.

A. In Port Arthur every member of the crew finishes his work at 4:00 p.m. and goes ashore.

Q. Keep in mind that the vessel came in at 10:00 o'clock in the morning.

A. Absolutely.

Q. They work until 4:00 p.m.?

A. They put in their eight hours. [2055]

(Testimony of G. A. Bergman.)

Q. And then they go ashore, some of them?

A. Everybody, because the night gang comes on board to take their place.

Q. You mean special relief?

A. Special relief, port gang.

Q. Some of them have to stay there until 5:00 o'clock in the evening?

A. Well, the men in the steward's department.

Q. Then they go ashore, is that correct?

A. Yes, wherever they want to go. That is their business.

Q. When they come back you sign them on again?

A. Yes, if I want to sign them on.

Q. That is right. But don't you expect, and it invariably happens, that your crew comes back?

A. Yes, those who want to come back.

Q. Now crews aboard the "Washington" don't change very often? A. Not many.

Q. That is right. And the procedure you outlined a few minutes ago on the question asked you, is that a general and usual procedure followed aboard the "Washington"?

A. I don't understand you.

Q. The procedure of the vessel coming in, say, sometime in the morning, if it does come in in the morning, the men go ahead and stay their regular eight hours in Port Arthur, and then they go ashore, and then they come back, and then they [2056] get signed on again. That is the usual and general procedure?

(Testimony of G. A. Bergman.)

A. Yes, those come back that want to come back.

Q. Now you don't call the men together when the ship comes into Port Arthur, do you?

A. No.

Q. As a matter of fact, you don't tell them anything?

A. I tell them what I have to tell them.

Q. That is right. What really happens, Captain, is that there is a certain man that you don't want aboard the ship, and you decide you don't want him aboard the ship for any reason, you will say by noon to him that he is no longer wanted on the ship?

A. Yes, that night.

Q. That evening? A. Yes, sir.

Q. The rest of them generally come back, and you expect them back?

A. Yes, they generally come back.

Q. And that is when you sign them on?

A. We hire them the next morning.

Q. And do you expect the steward's department to prepare breakfast in the morning?

A. Yes, sir.

Q. And you generally sign them on after they prepare the breakfast too, don't you? That happens? [2057]

A. After 8:00 o'clock sometimes.

Mr. Mandell: That is all.

Q. (By Mr. Martin) Captain Bergman, one more question. When you get into Port Arthur, and

(Testimony of G. A. Bergman.)

it is the final port of discharge, all of the crew is subject to work until 5:00 o'clock, isn't that true?

A. That is the time it says on the shipping articles.

Q. And that is true? A. Yes, sir.

Trial Examiner Persons: I thought the Captain said 4:00 o'clock.

A. The articles say 5:00 o'clock, but we usually let them go at 4:00.

Q. (By Mr. Martin) But if you want——

A. You can make them work until 5:00 o'clock, because the articles say so.

Trial Examiner Persons: I have one more question, if you don't mind, to put here. I notice on these articles one man was rated \$85.00 a month, and another man a hundred dollars a month. Mostly it goes by the month?

A. Yes, sir.

Q. They get paid by the voyage, do they not?

A. They are paid by the number of days on a voyage.

Q. If they work twenty days they get two-thirds of a month?

A. They get twenty days' pay. [2058]

Q. Whatever that makes, on eighty-five?

A. Yes.

Q. The time the men have free between voyages, for that they are not paid, is that right?

A. It is monthly wages, and they just work that time during that day they are on board, and they get their day's pay, anyhow.

(Testimony of G. A. Bergman.)

Q. And they come in there, and they are released at 4:00 o'clock, and they are off at the end of the voyage regularly? A. Yes, sir.

Q. And then they come back the following day to go out at 5:00 in the morning. The day they are off they are not paid for?

A. They are paid for every day. They get paid anyhow.

Q. If they have a day there between voyages?

A. They are paid anyhow. If I give them a day off they get paid anyhow.

Q. Between voyages?

A. Yes. If I want to give them a day's pay, I give it to them.

Q. I will put it this way: I am not sure this is highly important, but I am not quite clear in my mind. If a man makes four voyages in three months—you make more than one voyage a month?

A. Yes, about twenty-three days. [2059]

Q. If a man got in three voyages in 90 days, three months, would he get three full months' pay?

A. Ninety days' pay.

Q. In full? A. Every day.

Q. He wouldn't lose any money for the time between voyages? A. No, he would not.

Trial Examiner Persons: Thank you.

Redirect Examination

Q. (By Mr. Pipkin) Suppose you bring in a boat at 5:00 o'clock this Monday afternoon, and you

(Testimony of G. A. Bergman.)

don't sail until early Wednesday morning, would they be paid off Tuesday?

A. If we were detained in port——

Q. Would they work Tuesday?

A. If we detained them there, unless the chief mate wanted to give them a day off, for some of the men.

Mr. Pipkin: I don't think of any other questions.

Trial Examiner Persons: Anything further?

You will be excused, Captain Bergman. Thank you very much.

Mr. Martin: May we have a two minutes recess?

Trial Examiner Persons: Two minutes recess, at the plea of the Board's attorney.

(Thereupon, a short recess was taken.)

ERNEST ZIHRUL,

a witness called by and on behalf of the Respondent, being [2060] first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Pipkin) Your name is Ernest Zihurul? A. Yes, sir.

Q. Did you ever sail on the "Washington," Mr. Zihurul? A. Yes, sir.

Q. When?

A. From April 5 to September 5.

(Testimony of Ernest Zihrul.)

Q. Of what year? A. 1938.

Q. Were you on the "Washington" on June 1, 1938? A. Yes, sir.

Q. Were you on there up until July 14, 1938?

A. Yes, sir.

Q. Did you sign shipping articles?

A. Yes, sir.

Q. On the trip during that period of time?

A. Yes, sir.

Q. I show you Respondent's Exhibit No. 5. Is your name listed there? A. Yes, sir.

Q. Respondent's Exhibit 11?

A. Yes, sir. That is my signature.

Q. What were your duties on the "Washington" at that time, Mr. Zihrul? [2061]

A. Quartermaster.

Q. Who were the other quartermasters?

A. Mr. Buckless and Mr. West.

Q. Do you recall where the ship was on July 3, 4, and the morning of the fifth, 1938?

A. Yes, sir.

Q. Where were you?

A. At Claymont, Delaware.

Q. What was your watch, Mr. Zihrul?

A. My watch was the 8:00 to 12:00 watch.

Q. 8:00 to 12:00 watch?

A. In the morning and the afternoon.

Q. During the latter part of your watch was it your custom to go down and get the quartermaster for the succeeding watch?

(Testimony of Ernest Zihrul.)

A. Call him twenty minutes to.

Q. Did you see Mr. Buckless come on board the "Washington" on the night of the fourth of July?

A. Yes, sir.

Q. What condition was he in?

Mr. Martin: I object. That calls for a conclusion. Let him tell what he saw.

A. I saw Mr. Buckless come on board a quarter to twelve.

Q. (By Mr. Pipkin) Was he sober?

Mr. Martin: I object. It calls for a conclusion.

[2062]

Trial Examiner Persons: Just how would you like that question asked?

Mr. Martin: I would like to find out symptoms there were.

Mr. Mandell: Unless he qualifies on drunkenness.

A. I didn't say anything.

Trial Examiner Persons: He is quartermaster on the ship.

Mr. Martin: He has asked for strict conclusions. I would like to have him ask him what Buckless was doing that was out of the ordinary.

Trial Examiner Persons: Well, if we get the first question asked, in your opinion, was he drunk or sober we will go on to what indications there were.

Mr. Mandell: We will object to that.

Trial Examiner Persons: Objection will be en-

(Testimony of Ernest Zihrul.)

tered, overruled, and exception noted.

Mr. Mandell: I would like to object, that the witness has not been qualified.

Q. (By Mr. Pipkin) You saw him come aboard?

A. Yes, sir.

Q. Did he seem normal? A. No, sir.

Q. What was his apparent condition?

A. Well, he looked like he was under the influence of liquor.

Q. Did you follow him back aft? [2063]

A. I didn't follow him. I followed him aft as far as the entrance to the passageway to his quarters.

Q. What did he do that caused you to believe that he was under the influence of liquor?

A. I watched going in the passageway from the gangway to the passageway, and he was kind of staggering.

Q. What did he do when he went back aft?

A. Probably went to his room.

Q. Did you see whether or not he went to his room? A. Yes, sir.

Q. What was he doing in his room?

A. I didn't look in his room.

Q. You didn't look in his room? A. No, sir.

Q. What did you do then?

A. I waited until 12:00 o'clock.

Q. And then what did you do?

A. I went aft and went to call him.

Q. Did you go in his room? A. Yes, sir.

(Testimony of Ernest Zihrul.)

Q. Did he have his clothes on? A. Yes, sir.

Q. What condition was he in?

A. Well, I tried to get him up, shook him several times, and tried to talk to him. I couldn't get any life, so I [2064] left and went on back again.

Q. Did you smell any liquor?

A. Yes, sir.

Q. Have you seen drunk men before?

A. I couldn't remember.

Q. Have you seen drunk men before, anybody else? A. Yes, sir.

Q. Did this man seem like he was drunk to you?

A. Yes, sir.

Q. Was Buckless supposed to relieve you at 12:00 o'clock? A. Yes, sir.

Q. Then what did you do after 12:00 o'clock?

A. At twenty minutes past twelve I went back and called him again and tried to get him up; and at 1:00 o'clock again, with no success. I couldn't get any life in him up to 1:00 o'clock.

Q. Did you try again later?

A. After 1:00 o'clock. We were busy draining tanks until 2:00 o'clock, and then the second mate and I went aft and tried to call him again, to see if he had enough rest so he could stand his watch, but it was not possible.

Q. Was the second mate with you at that time?

A. Yes, sir.

Q. What was his name? A. Carr. [2065]

Q. Mr. Carr? A. Mr. Carr.

(Testimony of Ernest Zihrul.)

Q. Then what did you do?

A. Mr. Carr told me to finish up and stand his watch.

Q. Did you do it? A. Yes, sir.

Q. Had Buckless made arrangements with you to stand his watch before he went ashore?

A. No, sir.

Q. Did he ever ask you to stand his watch?

A. No, sir.

Q. Did you owe him any time for any watch he had stood for you? A. No, sir.

Q. Did he later make up that watch to you?

A. He never mentioned about missing a watch.

Q. Never paid you four dollars? A. No, sir.

Q. Never paid you anything?

A. Not anything.

Q. When did you next see Mr. Buckless?

A. I saw him about 4:30, sir. We were ready to sail, and I was one of the quartermasters to help let go the lines, and at 4:30 Mr. Buckless came in the mess room where I was sitting getting my coffee after being relieved at 4:00 [2066] o'clock by Mr. West, and he had a big head; and he said: "Well, I guess I spilled the beans this time."

Trial Examiner Persons: Said what?

A. He said: "I guess I spilled the works this time."

Q. I didn't quite hear.

A. That is a nautical expression; as much as to say he made a big mistake.

(Testimony of Ernest Zihrul.)

Mr. Pipkin: I believe that is all. [2067]

Cross Examination

Q. (By Mr. Martin) Did you register any objections to anybody about your standing Mr. Buckless' watch? Did you complain to any of the mates or to the captain about that?

A. He helped stand the watch, the second officer.

Q. What did you say to him?

A. That Mr. Buckless couldn't stand his watch; and after trying several times to get him up, I couldn't get him up, and so the second mate decided to let me finish the watch.

Q. That is all you said to him?

A. Yes, sir.

Q. Did you ever complain to the captain?

A. No, sir.

Q. Or the first mate?

A. I usually complain to the mate on watch, the mate in charge of the quartermaster watch.

Q. Had you ever before that stood a watch for Buckless? A. No, sir.

Q. Had he ever stood one for you?

A. No, sir.

Q. Have you ever traded watches with anybody while you served as quartermaster?

A. On the "Washington"?

Q. On any boat. A. Traded watches?

[2068]

Q. Yes.

A. What do you mean, changed from 8:00 to

(Testimony of Ernest Zihrul.)

12:00 to 12:00 to 4:00?

Q. Yes.

A. It is up to the mate. The mate usually changes the watches. After you get tired standing a watch, say for six months, he usually changes that around and puts you on a different watch.

Q. Of course you are mate now?

A. At the present time?

Q. Yes. A. I am out of work.

Q. You are out of work now?

A. I am out of work now.

Q. But you were promoted to mate on July 15, 1938, is that correct?

A. Yes, sir, for a relieving trip, as second mate for one trip.

Q. That was at the end of this trip?

A. The last trip I made.

Q. When those three men——

A. No, the trip after.

Q. The trip after the trip ending July 14 you became second mate? A. Yes. [2069]

Q. Did you later become first mate?

A. No. I made only one trip, one relieving trip.

Q. As second mate? A. As second mate.

Q. How long did you ship on the seas as quartermaster? A. Any particular ship?

Q. No, in general.

A. All together about six years.

Q. Did you ever have some one else stand your watch for you without asking the mate's permis-

(Testimony of Ernest Zihrul.)

sion? A. No, sir.

Q. Are you aware that it is a general practice for ordinaries and A. B.'s and quartermasters to swap watches with somebody else once in awhile?

A. It is not the practice without permission of the mate, chief officer, or the officer on watch.

Mr. Martin: That is all.

Q. (By Mr. Mandell) How do you pronounce your name? A. Zihrul.

Q. Mr. Zihrul, what license do you hold?

A. Master's license.

Q. Master's license? A. Yes, sir.

Q. How long have you held it?

A. Three years. [2070]

Q. You have served as a mate before you served as a quartermaster on the "Washington"?

A. Yes, sir.

Q. With what company?

A. Pennsylvania Shipping.

Q. In this instance you served as quartermaster, which is immediately below a third mate?

A. Yes, sir.

Q. On the "Washington"? A. Yes, sir.

Q. How many years have you gone to sea?

A. Twenty-six years.

Q. You started from the ranks?

A. Yes, sir, as deck boy.

Q. As deck boy? A. Yes, sir.

Q. You have been ordinary seaman, able seaman and so forth? A. Yes, sir, absolutely.

(Testimony of Ernest Zihrul.)

Q. By the way, is your master's license limited or unlimited? A. Unlimited.

Q. Now let me ask you this: In your experience at sea have you ever seen seamen come aboard the ship pretty well intoxicated? [2071]

A. Yes, sir.

Q. You have seen a number of very good seamen do that?

A. Well they say a good sailor always takes a drink.

Q. Well he takes more than one drink?

A. Well it is all right to take a drink as long as you don't get out of the way.

Q. Do you know what seamen call getting organized? A. Yes, sir, certainly.

Q. Getting pretty drunk? A. Organized?

Q. Yes.

A. No, I don't believe they call that organized. It may be that they do lately.

Q. You don't know that expression?

A. No. I never heard it before.

Q. All right. You have seen them however pretty drunk? A. Yes, sir.

Q. Good men, good seamen?

A. Good seamen, yes, sir.

Q. License holders?

A. Well occasionally.

Q. Yes. And they come back so drunk they can't stand their watches? You have seen that?

A. Yes, sir.

(Testimony of Ernest Zihrul.)

Q. That is nothing very unusual, is it? [2072]

A. Well it is very unusual. It doesn't happen very often, especially the licensed personnel and quartermasters.

Q. How about unlicensed personnel?

A. I have not seen so many lately.

Q. I am talking about your experience of 26 years at sea.

A. Yes.

Q. You have seen a number of them?

A. Yes, sir.

Q. Do they invariably fire them because they miss a watch because they get too drunk ashore?

A. Unless previously arranged and approved by the mate. Otherwise, in nine out of ten cases they get fired.

Q. Do you mean a man comes aboard——

A. If he comes aboard, there is always an officer on watch, and if he explains to him that he is not able to stand his watch, with the approval of the officer it is all right for somebody else to stand the watch.

Q. Have you seen men come aboard ship that didn't know their officers?

A. I wouldn't carry men like that.

Q. I asked you if you had seen such men aboard a ship?

A. Yes.

Q. Good seamen?

A. Yes.

Q. Good workers? [2073]

A. Yes.

Q. Keeping jobs on ships for sometimes a year at a stretch?

A. No.

(Testimony of Ernest Zihrul.)

Q. You have seen that, haven't you?

A. No, sir.

Q. I mean good seamen get drunk once in a while?

A. They get drunk in time off and when they are at liberty. They always return to their work.

Q. They don't drink aboard ship?

A. Sometimes they do drink on board ship. It doesn't matter as long as they do their work.

Q. Isn't it a rule not to permit liquor aboard ship? A. In most instances it is not permitted.

Q. So if they get drunk at all they get drunk ashore? A. Unless they sneak some on board.

Q. Generally? A. Generally ashore.

Q. And they get back, and they are so drunk they can't stand their watches. You have seen that lots of times? A. Not so very often lately.

Q. You mean lately the seamen have taken a turn for the better?

A. It looks to me that way. A different class of seamen may be going to sea now. [2074]

Q. That is fine. I am glad to note progress. I want to ask you however, Mr. Zihrul, whether you have seen men coming aboard ship, unlicensed men, drunk, and they couldn't stand their watch, and they were not fired for that. Have you ever seen that? A. I couldn't remember.

Q. You can't remember? A. No, sir.

Q. Now you tell us every time a seaman came aboard a ship intoxicated and couldn't stand his

(Testimony of Ernest Zihrul.)

watch he was fired because of that?

A. I just happened to be on ships there were not many drunkards on.

Q. That is just a coincidence?

A. Well, perhaps it is. I couldn't tell you about that. [2075]

Q. But you will admit, will you not, Mr. Zihrul, that a good seaman who does his work well sometimes gets pretty drunk ashore?

A. Good seamen?

Q. Yes.

A. I would like to see where the good seamen are nowadays.

Q. Do you know what a good seaman is?

A. Yes, sir.

Q. I am asking you a simple question, whether you have ever seen a good seaman get drunk?

A. I answered that before. I said, yes.

Q. They get pretty drunk?

A. I have seen them that way.

Q. They come aboard ship that way?

A. Yes, sir.

Q. How long was it since you got off your last ship? A. Four months.

Q. Off the "Washington"? A. Yes, sir.

Q. Where have you lived in the last four months? A. New York, sir.

Q. When did you come from New York?

A. Yesterday.

Q. Came by train? A. Yes, sir. [2076]

(Testimony of Ernest Zihrul.)

Q. You have got a job waiting? A. No, sir.

Q. You have got a ship waiting to get out on?

A. No, sir.

Q. Where is your home? A. Philadelphia.

Q. What is your address?

A. 735 South Front Street.

Q. Did you ever serve in the capacity of first mate? A. Yes, sir.

Q. Master? A. No, sir.

Q. You didn't serve in that capacity on Texas Company vessels? A. No, sir.

Q. Did you serve on coastwise vessels?

A. Tankers.

Q. Coastwise?

A. Coastwise, intercoastal and ocean.

Q. I am particularly interested in coastwise. They don't sign on generally before a commissioner on coastwise vessels, do they? A. No, sir.

Q. In your experience as chief mate and in the years that you have gone to sea do you know whether or not discharges are [2077] given to the men regardless of whether they get off the ship or not? A. Yes, sir.

Q. They do? A. The law requires it.

Q. I asked you a simple question. The question is this, if you didn't understand it. A man joins a ship at Port Arthur. A. Yes, sir.

Q. And takes a trip to Bayonne, New Jersey.

A. Yes, sir.

Q. And gets back to Port Arthur. He doesn't

(Testimony of Ernest Zihrul.)

get off the ship. He remains on the ship for five more trips, making a total of six trips.

A. Yes, sir.

Q. Does he get six discharges, or just one discharge? A. Discharge for each separate trip.

Q. A discharge for each separate trip?

A. Yes, sir.

Q. How long were you on the "Washington"?

A. Four months.

Q. And during the four months you were on her you made about six trips?

A. About five or six trips.

Q. How many discharges did you get?

A. I got two discharges. [2078]

Q. And you made six trips? A. Yes, sir.

Q. You got a discharge as quartermaster?

A. Yes, sir.

Q. And you got one discharge as third mate?

A. Second mate.

Q. Second mate? A. Yes, sir.

Q. Relieving mate? A. Yes, sir.

Mr. Mandell: That is all.

Q. (By Mr. Martin) I have one more question. I would like to ask——

Trial Examiner Persons: I would like to ask a question or two, and my time is properly now, and the recross and redirect examination will cover what mistakes the Trail Examiner may have made.

Q. During the time you were on this "Washington" were you a union member? A. Yes, sir.

(Testimony of Ernest Zihrul.)

Q. Did you attend union meetings?

A. Yes, sir.

Q. How many? A. Every one of them.

Q. How many would that be, Mr. Zihrul? [2079]

A. Usually once a week; one meeting every week. I didn't belong to the particular union the crew belonged to.

Q. Are you speaking advisedly in saying you attended every one? A. Yes, sir.

Q. Weren't there some held when you were on duty, on your watch?

A. No, I don't think so. No, they were held generally between 6:00 and 7:00 in the afternoon, after supper.

Q. You heard Captain Bergman's testimony?

A. Yes, sir.

Q. Did you see those notices posted, as he described? A. Yes, sir.

Q. How many can you remember?

A. Well, the last couple of trips, there was a permanent notice outside the galley door.

Q. Did it have a name under it?

A. It said, union meeting tonight, CIO, National Maritime Union.

Q. Signed by any officer? A. No, sir.

Q. It was just exhibited without any authorization or signature?

A. Yes, sir. All it said was, union meeting tonight, and signed CIO. [2080]

Q. Did you have a permanent delegate or two?

(Testimony of Ernest Zihrul.)

A. Had a delegate for the deck, engine, steward, and ship's delegate.

Q. A ship's committee of three?

A. Four delegates.

Q. What did you call them, a committee?

A. One for the deck department to represent the seamen walking on deck.

Q. You called it a union committee, or what?

A. Well, it was a committee for the ship's crew.

Q. Committee? A. Yes, sir.

Q. On the last trip that Rosen and Buckless and Zinkiewicz made—— A. Yes, sir.

Q. Would you be able to say what proportion of the unlicensed personnel were union members?

A. 100 per cent of the members of the crew were union men.

Q. You mean of the unlicensed members of the crew?

A. Of the unlicensed personnel, all were union men.

Trial Examiner Persons: Anything further, Mr. Pipkin?

Mr. Pipkin: No, sir.

Mr. Martin: Have you any other questions?

Q. (By Mr. Martin) What union were you a member of?

A. I belonged to the Masters, Mates and Pilots, Local 90, San Francisco. [2081]

Q. Is four months the longest single period you ever have served on a Texas Company tanker?

(Testimony of Ernest Zihrul.)

A. Four months? I served as quartermaster for The Texas Company twenty years ago, and I held jobs on some ships more than a year; a year and a half and two years on one ship.

Q. Texas Company?

A. Yes. That is twenty years ago, or more.

Q. Have you held a job on Texas Company ships for more than four months consecutively any time during the last few years? A. No, sir.

Q. Now while you were on the "Washington" for four months did you have a written contract with the company? A. Articles.

Q. You had no written contract other than the articles? A. Regular shipping articles.

Q. Regular shipping articles? A. Yes, sir.

Q. Mr. Zihrul, who presided at the union meetings while you were on the "Washington"?

A. Mr. Rosen.

Q. How about before Mr. Rosen came aboard?

A. Before Mr. Rosen came aboard we didn't have any meetings.

Q. You didn't have any meetings before Mr. Rosen came aboard? A. No, sir. [2082]

Q. How long before Mr. Rosen came aboard that you didn't have any meetings?

A. Since I came aboard, April 5.

Q. And then after Mr. Rosen came aboard you had meetings every week?

A. Every week, and sometimes twice a week, special meetings.

(Testimony of Ernest Zihrul.)

Q. Now who was elected as deck delegate?

A. Mr. Zinkiewicz I think.

Q. Who was elected ship's delegate?

A. Mr. Rosen.

Mr. Martin: That is all.

Trial Examiner Persons: Anything further?

Mr. Pipkin: That is all.

Trial Examiner Persons: You will be excused,
Mr. Zihrul.

Adjournment at this time until 9:00 a. m. tomorrow.

(Whereupon, at 4:40 o'clock p. m., November 28, 1938, the hearing was adjourned to 9:00 o'clock a. m., November 29, 1938.) [2083]

United States
Circuit Court of Appeals
For the Ninth Circuit. ²

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record
In Five Volumes
VOLUME IV
Pages 1467 to 1724

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

DEC 10 1942

No. 9518

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

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vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

NATIONAL MARITIME UNION OF AMERICA,
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In Four Volumes

VOLUME IV

Pages 1467 to 1724

**Upon Petition to Review, and Request for Enforcement
of, Order of the National Labor Relations Board**

J. W. CARR

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Pipkin) Give your name and initials to the reporter, Mr. Carr.

A. J. W. Carr.

Q. Mr. Carr, what are your duties?

A. Second mate aboard the "Washington."

Q. Are you or were you up to the time the "Washington" sailed a few days ago second mate on the "Washington"? A. I was.

Q. Do you plan to return to that ship?

A. I do.

Q. As soon as you are relieved here?

A. Yes, sir.

Q. How long have you been with the Texas Company? [2085]

A. Since April 29, 1935.

Q. How long have you had your license?

A. Since February 12, 1934.

Q. Do you recall the three seamen by the names of Buckless, Ainkiewycz and Rosen? A. I do.

Q. When did they come aboard the "Washington"?

A. I don't remember the date they came aboard.

Q. Do you remember when they came aboard?

A. Yes, sir, I do.

(Testimony of J. W. Carr.)

Q. Did they come together or not?

A. That I couldn't say.

Q. Did they come on board together?

A. I don't know if they came aboard together, but they were there they day they signed on.

Q. Did you see them before you sailed?

A. Yes, I saw them.

Q. Did you have any occasion to talk to any of them?

A. I spoke to Mr. Buckless. It happened that he was there before. That was all.

Q. Do you recall when the ship was at Claymont, Delaware?

A. Yes, I do.

Q. When was that?

A. It arrived on July 3, and sailed the morning of the fifth. [2086]

Q. Were those three men I have named on the ship at that time?

A. They were.

Q. What watch did you stand, Mr. Carr?

A. 12:00 to 4:00, morning and evening.

Q. What did Mr. Buckless do?

A. He was quartermaster.

Q. What was his watch?

A. 12:00 to 4:00, morning and evening.

Q. He was on the bridge at the same time you were?

A. That is right.

Q. What is the custom about calling a man, say you are working on the 8:00 to 12:00 watch, calling the man who is to go on the 12:00 to 4:00 watch.

(Testimony of J. W. Carr.)

A. The custom is to call him at twenty minutes before 12:00. That gives him time to dress and have his coffee, and go on watch at 12:00 o'clock.

Q. If you recall, what time did you come on watch the night of the fourth or the morning of the fifth?

A. I came on watch the morning of the fifth at midnight.

Q. Was Buckless there when you came on?

A. He was not.

Q. Did you inquire about him?

A. The quartermaster came to me and said he had no relief, that Buckless was unable to get up; that he couldn't get him [2087] up.

Q. What quartermaster was it?

A. Mr. Zihrul.

Q. Was he the man on the stand yesterday?

A. Yes, sir.

Q. Well, did you send the quartermaster back for him later on?

A. Yes, sir. He tried two or three times to get him up, and couldn't get him up. And I said, "Well, let him sleep a couple of hours, until 2:00 o'clock," and we tried, and were unable to get him up at 2:00.

Q. Did you ever go back there?

A. I did, at 2:00 o'clock.

Q. What did you find when you went back?

A. He seemed to me like a dead man, and smelled of drinking. I couldn't get him up.

(Testimony of J. W. Carr.)

Q. You couldn't arouse him? A. No, sir.

Q. Didn't say anything? A. No, sir.

Trial Examiner Persons: Did he stand his watch, or any part of it?

A. He did not.

Q. Had he made any request of you to permit Zihrul to stand his watch for him? [2088]

A. None whatever.

Q. Did he ask you to be permitted to change his watch? A. No, sir.

Q. Did he ask you to let somebody else stand his watch? A. No, sir.

Q. Do you know of your own knowledge whether he stood any extra watch there after or before?

A. Not that I know of.

Q. Do you know whether he had stood any watch to get ahead on his time?

A. No, sir, none to my knowledge.

Q. You went off duty at what time then, Mr. Carr?

A. I finished discharging oil, and we sailed early in the morning. I was on duty until the ship sailed, let go. I don't know what time it was, but it was between 4:00 and 8:00.

Q. You didn't go off directly at 4:00 o'clock?

A. No, sir.

Q. Did Zihrul work out the entire second watch?

A. Yes, sir, he did, four hours.

Q. He stood another four hours?

(Testimony of J. W. Carr.)

A. Yes, sir.

Q. That made eight hours in a row?

A. Eight hours.

Q. When did you next see Mr. Buckless?

A. When we let go that morning. I don't know what time it [2089] was.

Q. Was he on deck?

A. He came out on deck.

Q. What did he say, if anything?

A. Well, he admitted to me that he was done with, that he had spilled the beans. He said he had got on a good one last night.

Q. Was he sober when he came out?

A. He was then.

Q. Was he able to help let go the lines?

A. Yes, he was.

Q. Mr. Carr, did you ever see him under the influence of liquor at any other time on these two vessels?

A. Well, I presume he was drinking, but that was the first time I saw him out of order.

Q. What do you mean by presume, Mr. Carr?

A. Well, it is not hard to tell when a man is drinking when you are working with him every day, those that do drink. But he was able to carry out his work.

Q. Did you ever see him come aboard staggering on the gang plank?

A. No, I don't recall that I did.

(Testimony of J. W. Carr.)

Q. Did you ever see him weaving up and down the deck?

A. No, sir, I don't think I did.

Q. Do you recall the day you were at Bayonne, New Jersey? [2090]

A. Yes, sir.

Q. Was he sober there?

A. He was on watch.

Q. On watch? A. Yes, sir.

Q. And you said you know Mr. Rosen and Mr. Zinkiewicz? A. I do.

Q. Did you ever observe them working on board?

A. I have at times.

Q. Under whom were they directly working?

A. Under the mate and boatswain.

Q. Did you ever have occasion to see what sort of work they were doing and how they were doing it?

A. Well, on the 12:00 to 4:00 watch I had occasion to observe Mr. Zinkiewicz. Mr. Rosen was on the 8:00 to 12:00 watch.

Q. What sort of work did Zinkiewicz do?

A. Well, the mate and I discussed it. He was lagging in his work, and I happened to notice that he was not moving as fast as the others.

Q. To be particular, what kind of work was he supposed to be doing?

A. Whatever work he was doing, chipping, painting and so on.

Q. Was he slower than other members of his crew? [2091]

A. Yes, sir.

(Testimony of J. W. Carr.)

Q. Was he noticeably so?

A. Noticeably so.

Q. You would not have to be looking for it to see it? A. No, sir.

Q. Did you have any occasion to observe what sort of work Mr. Rosen did?

A. He was on the 8:00 to 12:00 watch, and I was asleep in the morning.

Q. Mr. Carr, were working rules posted on the "Washington"? A. Yes, sir.

Q. While you were on the bridge with Buckless during your and his watch, what sort of a helmsman was he, Mr. Carr?

A. Well, he was not very good. I would not call him a good helmsman. [2092]

Q. Tell the Examiner what sort of a helmsman he is.

A. He is inclined to let go the wheel and walk back and forth in the wheel house; steer a zigzag course.

Q. Did you ever have to criticize his work?

A. I did. I mentioned the fact to him several times.

Q. What did he say?

A. He didn't say anything.

Trial Examiner Persons: Pardon?

Mr. Pipkin: He said he didn't say anything.

Q. What happens to the ship when the quartermaster lets go of the wheel and walks back and forth?

(Testimony of J. W. Carr.)

A. Well it is inclined to go its own course, whatever it may choose.

Q. Is it likely to go straight?

A. No, it is not likely.

Q. Did you ever look out behind the ship when Buckless was steering and see the wake?

A. Yes, sir.

Q. Was it straight? A. No, sir.

Q. Did you ever catch his course off?

A. Yes, sir.

Q. What is the most you ever caught it off?

A. Ten degrees.

Q. Ten degrees? [2093] A. Yes, sir.

Trial Examiner Persons: You mean degrees, do you, Mr. Carr? A. Yes, sir.

Q. (By Mr. Pipkin) Would it vary between that?

A. All the way from 5 to 10 degrees back and forth.

Q. Do you know whether or not Mr. Buckless ever smoked on duty?

A. I don't know whether he did or not.

Q. Did you?

A. No, sir. I don't use tobacco ever.

Q. You don't use tobacco in any form?

A. No, sir.

Q. Did you ever find any cigarette butts?

A. The captain mentioned the fact to me one morning when he came on the bridge that there

(Testimony of J. W. Carr.)

were match sticks there next to the door, and told me to be pretty watchful about it. But who dropped them, I don't know.

Q. Did you drop them?

A. No, sir. I didn't use them. I don't carry matches or cigarettes.

Q. Mr. Carr, what was the attitude of the officers of the "Washington" with reference to union men?

A. Well they show no discrimination between union and non-union. In fact, they were all the same to them. [2094]

Q. Do you treat union and nonunion men alike?

A. I treated them all alike.

Q. Did you ever talk to Mr. Zihrl about whether Buckless paid for his watch?

A. I asked him, and he said he never mentioned it to him. That was what he was sore about.

Q. Now, Mr. Carr, you had a lot of conversation with Buckless while you were on the bridge there, didn't you? A. Yes, off and on.

Q. Did he tell you about his past record?

A. He often discussed it, yes, sir.

Q. Was he in the navy?

A. He told me he was.

Q. Were you in the navy? A. No, sir.

Q. Did you have a war record?

A. I was in the United States Marine Corps.

Q. Was Mr. Buckless ever court-martialed?

(Testimony of J. W. Carr.)

A. He told me he was court-martialed in the navy, and served time in Portsmouth, New Hampshire, and was dishonorably discharged.

Mr. Martin: We object. It is immaterial and irrelevant, and it has no place in this case.

Mr. Pipkin: It was testified what a splendid record he had. I want to further develop what this dishonorable [2095] discharge was for. The record can be had on it.

Mr. Martin: The record would be the best evidence.

Mr. Pipkin: The only way it could be done would be to bring somebody down with them.

Mr. Martin: We can get them certified.

Mr. Pipkin: This man admitted his record. If you want to rebut it, you can bring Mr. Buckless in here to do it. It goes to refute absolutely Mr. Buckless' contention as to what a splendid navy record he had; that he had never been accused or convicted of any disorderly conduct heretofore.

Trial Examiner Persons: Could you give a page reference? I am under the handicap of having had to review this thing in a very brief time. I have no such remembrance.

Mr. Pipkin: It will be quite easy, your Honor, if I can locate Mr. Buckless' testimony.

Trial Examiner Persons: In the fourth volume, beginning on page 627.

Mr. Pipkin: Off the record.

(Discussion off the record.)

(Testimony of J. W. Carr.)

Trial Examiner Persons: I find, Mr. Pipkin, on page 627 and 628 reference to navy record by Mr. Buckless, at the beginning of his direct testimony. He was a boatswain's mate, able-bodied seaman and quartermaster, page 628. I find no reference to the circumstances of his discharge.

Mr. Pipkin: That was his qualifying opening statement, [2096] and if you will bear with me I will pick out some more for you.

In the little brief summary I have here of the testimony, the first time he begins to talk about his drinking that was repeatedly denied. Beginning on page 1916——

Trial Examiner Persons: When he was recalled?

Mr. Pipkin: When he was put back on the stand by the Board to explain the testimony of Captain Swanson.

Trial Examiner Persons: Yes, go ahead.

Mr. Pipkin: Now that testimony talks about the fact that he did get drunk, has gotten drunk, and that he did his heavy drinking at port, pages 1928 and 1929. He admits drinking a few beers at Boston, and admits giving a fellow a shiner, a couple of shiners, I believe, after leaving Boston.

This question which I directed to Mr. Carr here was to show not only that what we are saying here is true, that this man did drink, but that he had been guilty of disorderly conduct before, and had been so convicted by the United States Department of Commerce, or the Navy Department.

(Testimony of J. W. Carr.)

Trial Examiner Persons: There will be no question on the record about the fact that Mr. Buckless admitted he drank, and drank on the job; but I find nothing here, and my recollection is that he made no direct reference to the circumstances of his discharge from the navy, which is what I have [2097] in mind at this time.

Mr. Pipkin: I don't recall about that.

Trial Examiner Persons: I recognize that I am handicapped in this matter. I am going to sustain the objection in so far as you are attempting to go into the discharge and the man's record.

I would like to state on the record quite frankly that I think the questions should be excluded if Mr. Buckless made no reference to his discharge, and no claim that he had been honorably discharged, when he was on the stand. I think if he did make such a statement they should be allowed.

Mr. Pipkin: You are taking the position this would not go to the general merits of the matter of Mr. Buckless' conduct?

Trial Examiner Persons: As to his service on a merchant ship some years, almost 20 years, after he was in the navy. If it went to the credibility of the witness I certainly would allow the question.

Mr. Pipkin: Would it not come within an attack on his credibility in his first testimony when he said he didn't do any drinking?

Trial Examiner Persons: I am not ruling on

(Testimony of J. W. Carr.)

the question of drinking. I am ruling on the circumstances of his discharge from the navy.

Mr. Pipkin: The fact that he was discharged from the [2098] navy for disorderly conduct?

Trial Examiner Persons: After all, he was in the navy when?

Mr. Pipkin: I assume it was during the war. Is that your understanding, Mr. Carr?

A. Yes, sir, shortly after or during the time.

Trial Examiner Persons: I take it you won't want to go into anything that affects a man's record back in war time on a navy ship, will you?

Mr. Pipkin: I am interested in going into any conduct that shows that what he says in a hearing at Port Arthur as being a man that didn't do any drinking and behaved himself has not been true; and which has been connected up with the events over a period of years that show that he was discharged from another tanker for missing a watch. He has admitted drinking from time to time. It is not a period of 20 years I am attempting to bridge.

Mr. Martin: Has The Texas Company been receiving daily copy right straight through these hearings of the testimony in these proceedings?

Mr. Pipkin: Yes, sir.

Mr. Martin: Then certainly there was an opportunity during the cross examination to look into this matter, because Mr. Buckless made reference to the navy while he was on the stand, and we resumed the following day. [2099]

(Testimony of J. W. Carr.)

Mr. Pipkin: Maybe I made a mistake in assuming that his navy record was good. You put us in a position of not being able to talk to the "Washington" until two weeks after the hearing was concluded.

Trial Examiner Persons: Let's not have oral argument at this stage. I want to withdraw the statement that it must have been 20 years, as his entire service at sea has been 20 years. He said he was discharged as boatswain's mate.

Mr. Martin: Mr. Examiner, I would like at this time to move that Mr. Carr's answer to the last question be physically taken from the record.

Trial Examiner Persons: The motion will be denied.

Mr. Pipkin: I would like at this time to move on behalf of the respondent that this case be held open and continued until such time as a representative of the navy department, with the proper records showing these facts that this man is willing to testify about, can be here in Port Arthur and put them in the record.

Trial Examiner Persons: Wouldn't it be simpler to stipulate that these records can be procured and put in as an exhibit later.

Mr. Pipkin: That is perfectly agreeable to me.

Trial Examiner Persons: Instead of keeping this man here.

Mr. Pipkin: You understand we would have photostatic copy from the department if we could get them. [2100]

(Testimony of J. W. Carr.)

Trial Examiner Persons: I have some knowledge of the difficulty you are up against.

Mr. Pipkin: The navy department will not let you get copies and take them out.

Trial Examiner Persons: They will make them and send them to you.

Mr. Pipkin: They refused us, saying that it was an official record of a court-martial of one of their men, and the only way we could get it was to send one of their representatives with the record.

Trial Examiner Persons: But certainly the record of service in the government is a public matter.

Mr. Pipkin: Sir?

Trial Examiner Persons: And the record of that man's discharge is a public record.

Mr. Williams: Unless I am mistaken, that is a record of a court-martial, and I don't believe they will allow a photostat made or a copy made of anything like that. They don't want it to be used as against the man at all. They will send a representative, and he will have the record, and he will give the testimony from that record, but I doubt very much if they will allow copies or photostats to be made.

Trial Examiner Persons: They might not allow a copy of the complete record, but certainly the circumstances of his discharge should be allowed.

[2101]

Mr. Pipkin: Will the Examiner permit Mr. Martin to wire the navy department at our ex-

(Testimony of J. W. Carr.)

pense and ask that copies be forwarded to us at our expense. They have already refused us.

Trial Examiner Persons: How much of it do you want?

Mr. Pipkin: I don't want the entire detailed proceedings of the court-martial. The findings are what we do want and the order on the findings.

Mr. Martin: Mr. Examiner, I questioned Mr. Buckless, and I don't remember asking any question, and so far the respondent's attorneys have failed to show any place in the transcript where any testimony was directed to anything like that. There was a witness on the stand by the name of George Hart, who was a petty officer in the navy, and stated that he had charge of some men in the navy, but I don't remember Buckless saying any such thing. If there was no testimony to that effect certainly no record concerning his navy career would be admissible.

Trial Examiner Persons: I will direct your attention to pages 267 and 268, Mr. Buckless being on the stand on direct examination, where he said he was boatswain's mate.

Mr. Martin: All right, I am wrong in that instance. However, respondent's attorneys are making the offer of this material on the ground that Buckless bragged about his record in the navy. I challenge them to find any statement in his [2102] direct examination or cross examination where he bragged or made any statement about his navy rec-

(Testimony of J. W. Carr.)

ord, other than that the Examiner has just read, and I submit the respondent's attorneys cannot show a single instance of Buckless bragging. And I might say he is a very unbragging sort of person. I submit that no record concerning his navy activities has any relevancy in this case; particularly in view of the fact that some years after he was dishonorably discharged from the navy the respondent company hired him on three different boats during a period of two years, and they have had every opportunity to go into everything he did on the two boats during the three years, during three different periods of employment; and I think that should be enough to impeach his testimony, if such they are able to do. [2103]

Trial Examiner Persons: I want you to bear with me while I read a question and answer on page 629, line 8, still under Mr. Martin's examination: "Question: When were you in the navy? Answer: I went in the navy June 4, 1915. Question: When did you leave? Answer: 1919." That is just for my own benefit, when I said it was twenty years ago.

The Trial Examiner will rule that the questions relative to his service or the circumstances of his leaving the navy will be excluded. Exception will be duly noted.

Mr. Pipkin: You will likewise admit from what you have just read, you will now, that his connection was not as a war time sailor?

(Testimony of J. W. Carr.)

A. 1915 to 1919.

Mr. Pipkin: But his court martial came after 1919, after the close of the War.

Trial Examiner Persons: I don't know anything about that.

Mr. Pipkin: He said he left the navy.

Trial Examiner Persons: Some men do leave the navy not on discharge.

Mr. Pipkin: Do I understand then you are not going to permit us to try, through the Board, to get a record of this?

Trial Examiner Persons: I don't see the necessity.

Mr. Pipkin: Do I understand you won't let us try to bring a man down here?

Trial Examiner Persons: Any witness you bring down will [2104] be heard.

Mr. Pipkin: If a Navy Department official comes in with these records, will you permit him to testify fully on this matter?

Trial Examiner Persons: Yes, or if you wish to have it understood that the records may be procured and put in, that can be done. It will be subject then to the Board's decision, whether or not it is admissible.

Mr. Pipkin: Will you then permit the Board's attorney at Washington and Mr. Van Dusen, coming down from New York to Washington, to interview the Navy official together, and whatever they ascertain to put in into the record?

(Testimony of J. W. Carr.)

Trial Examiner Persons: May I say you will have opportunity to present written briefs, and you will have opportunity to have oral argument before the Board at Washington, so you are not taking any chances.

Mr. Pipkin: I understand, but I do want to get the best record possible on this very point, because I feel it is vitally important.

Trial Examiner Persons: I am more or less speaking from my own judgment in the matter, but I take it such a record, if offered later, in view of the finding made by the Trial Examiner, would have the standing of a rejected exhibit. If we receive exhibits during the hearing and reject them, they are put in a separate file, and sent to Washington, and they can be passed on by the Board.

[2105]

Mr. Pipkin: In order to make this complete, may I ask this witness one more question to get his statement in the record?

Trial Examiner Persons: By way of offer of proof?

Mr. Pipkin: By way of offer of proof.

Mr. Martin: You ask the question, and I will object to it before he answers it.

Q. (By Mr. Pipkin) Just relate for the purpose of our bill of exception what he told you in connection with the navy, what Mr. Buckless told you with reference to his navy record.

(Testimony of J. W. Carr.)

Mr. Martin: I object on the ground that it is repetitious. He has already related once what Mr. Buckless told him.

Trial Examiner Persons: Objection overruled. It stands as an offer of proof.

Mr. Martin: I object on the further ground that it is irrelevant and immaterial to any issue in this case.

Trial Examiner Persons: The Trial Examiner has so ruled.

Mr. Martin: Very well.

Q. (By Mr. Pipkin) Go ahead.

A. We just discussed service records and so on, and he told me that he got in trouble, in fact serious trouble, and was given a general court martial, and served time in Portsmouth, New Hampshire; and that he got in many difficulties, in fact was incorrigible, and that in fact they very nearly killed [2106] him a number of times, the marine guards. He has a very bad record, so he told me.

Q. Do you recall how long he said he was there?

A. No, I don't recall.

Mr. Pipkin: To the action of the Examiner we have our automatic exception.

Trial Examiner Persons: Yes, Mr. Pipkin, always.

Mr. Williams: Your Honor is laboring under the disadvantage of not having sat through the previous testimony, and here is the reason we think we are entitled to go very fully into this. As has

(Testimony of J. W. Carr.)

been shown you, we have had no opportunity to confer with the officers of the "Washington". The complaint alleges discharge from two vessels. One was the "Nevada". The "Nevada" made a trip to Spain during the present unpleasantness in Spain, and Buckless was a member of the crew of the "Nevada". We produced the officers of the "Nevada", and of course he testified for himself to substantiate the charge; and all through his testimony, on cross examination, he denied that he used liquor to excess, or had used liquor to excess. He denied that.

He also went further, and related specific occasions and instances where he was rated as a splendid seaman. He had made a ship's ladder, and so forth, and he brought in this navy experience as corroborating the fact that he was a good seaman, or should have been a good seaman. [2107]

Now we produced the officers of the "Nevada", and the testimony showed plainly that he had drunk to excess, and so forth.

Then some two or three days later the complainants and the Board put Mr. Buckless back on the stand and the attorney for the Board questioned him and, in order to explain his former testimony, I suppose, he practically admitted that he was a drinking man, and had been a drinking man on various and sundry occasions. In other words, his testimony then was more in the nature of a confession and avoidance, and we say it affects his general credibility.

(Testimony of J. W. Carr.)

Of course he still maintained that he could perform his duty, and his explanation of this episode was that he claimed he had an agreement to have someone else stand that watch. We think it goes to his credibility as a witness to show his conduct in the navy, because I have no other way to explain his second appearance on the stand. The best term I can use is confession and avoidance, because, under partially leading questions, they didn't hurt us, so I didn't object to them, but he got on this stand and admitted, yes, I am a drinking man. [2108]

The Board's attorney has referred to his conduct in this proceeding even, your Honor, as being an habitual drunkard on the "Nevada". He used that very language. He asked why he was hired on the "Washington" when he was known to be an habitual drunkard. This is the same as an indictment and a conviction, and we have the right to show it. When he came back on the stand in rebuttal he entirely changed the color of the testimony.

Trial Examiner Persons: I have the testimony in mind, Mr. Williams, except for the one phrase you used which I will not at this time repeat. Do you have in mind that there has been no ruling to the effect that questions as to his drinking habits are excluded? The ruling of the Examiner is simply that we will not go into the matter of his discharge from the navy, which was nearly 20 years ago.

(Testimony of J. W. Carr.)

Mr. Williams: Just one more word. The reason we think we are entitled to this is this evidence that he was a good seaman that he himself brought into the record. He went back 25 years ago, I guess, or more, and those things were all brought into this record to show his long and able service as an able seaman or as a boatswain or as a quartermaster. They were brought in for that purpose. Now if we can go back and prove what those habits were that obtained throughout the period that he testified about we think we ought to be entitled to do it, as affecting the credence to [2109] be placed in his present testimony that he is a good seaman; and he testified to that over and over again. He made a ship's ladder and claimed that he was complimented on it.

Trial Examiner Persons: And the first mate said he made it over.

Mr. Williams: Yes, I believe that is right. But he related his navy experience. I think every seaman is proud of the fact if he has served in the navy, as a teaching school.

Trial Examiner Persons: Judge Williams, I don't want to fall into the error, which would be quite manifest, of making rulings which assume that this Trial Examiner has complete and intimate knowledge of this record, but I do want to ask a question to this effect. You have had considerable experience in maritime practice, I gather?

Mr. Williams: A little.

(Testimony of J. W. Carr.)

Trial Examiner Persons: Aren't you just a little falling into the mistake of applying standards to the seaman, whose highest rank was boatswain, such as would be applied to the master or mate of the vessel?

Mr. Williams: No, I wouldn't say that. As an illustration, I don't believe I could condemn an able seaman if he had been to sea a long time, and he got ashore and got a little high, if he was able to do his work properly when he went back to his watch. I don't think I would condemn him [2110] for that. But if a master of a vessel did that, I might.

Q. Now specifically, if a man, a seaman, whose highest rank was boatswain, 20 years ago was disciplined in the navy, and got a dishonorable discharge, would you hold that against him as a seaman on a Texas Company ship?

Mr. Williams: I would hold it against him, yes. It would somewhat depend on what the cause of that was, the grounds. It would certainly affect his credibility. That would largely depend on the charge and the order.

Trial Examiner Persons: If he had made any claim that he had a perfect record in the navy, yes.

Mr. Williams: And especially if that was followed up by inebriate habits, if that tied on to that, I think it would be of some probative force as affecting his credibility.

Trial Examiner Persons: Can we go on, Mr. Pipkin?

(Testimony of J. W. Carr.)

Mr. Pipkin: Your Honor, if you or I find anything else in this record before it closes——

Trial Examiner Persons: I would be glad to hear it, Mr. Pipkin.

I may say for my own justification in the case of Mr. Buckless I made a special effort to examine the testimony pro and con, because of the conflict, but in the time I had I couldn't go too far with it.

Q. (By Mr. Pipkin) Mr. Carr, would you say that Mr. Rosen and Mr. Zinkiewicz, while they were on the "Washington" and you [2111] observed their daily work, would you say they were good seamen?

A. They may be good seamen, but they didn't show any indication of it there.

Q. And you yourself noticed on various occasions?

A. Well I noticed Mr. Zinkiewicz particularly.

Q. What is your testimony as to Mr. Rosen then?

A. Well I did not have the chance to observe him, because he was on the 8:00 to 12:00 watch; and I was on the 12:00 to 4:00.

Q. Did you ever see him around?

A. I have seen him moving around on deck, but I didn't have a chance to observe his work as I did Mr. Zinkiewicz's.

Q. At the time did you discuss Mr. Rosen with the mate? A. We even discussed the affair.

Trial Examiner Persons: That is hardly an answer to the question.

(Testimony of J. W. Carr.)

A. We even discussed their work.

Q. (By Mr. Pipkin) You even discussed this man's work? A. Yes, sir.

Q. What man do you mean?

A. Mr. Zinkiewicz.

Q. Did you discuss Mr. Rosen's work?

A. I didn't discuss him very much.

Q. What was the nature of your discussion, Mr. Carr? [2112]

Mr. Mandell: We object to that, Mr. Examiner, as the rankest sort of hearsay.

Trial Examiner Persons: Objection overruled.

Q. (By Mr. Pipkin) Go ahead.

A. The nature of his work, and that he seemed to be lying down on the job and not working as the other fellows were.

Trial Examiner Persons: Could you give a specific instance, Mr. Carr?

A. Where he was sitting down on his job, not doing anything, and the other fellows seemed to be working.

Q. I mean can you tell in reference to a specific job?

A. Well at practically everything that he was doing.

Q. (By Mr. Pipkin) Do you recall any specific instance?

A. No, sir, not any specific cases.

Mr. Pipkin: That is all.

(Testimony of J. W. Carr.)

Cross Examination

Q. (By Mr. Martin) Mr. Carr, did you ever recommend to the mate or the captain that Buckless be fired?

A. No, sir. That is not my duty. [2113]

Q. You were for giving him another chance?

A. I have no authority for that whatever.

Q. No authority to make a recommendation to the master?

A. That is a proposition for the master.

Q. You have the power to recommend that a man be fired?

A. I wouldn't call that the power at all.

Q. You have the right? A. No, sir.

Q. You have the privilege?

A. I don't have either the right or the privilege. I could recommend that this was a good man to stay off, and if it was all right with the master, it will be all right, and if not it would not be.

Q. You could point out to the first mate or the master that the man was a good seaman?

A. I could do that.

Q. You could point out that he was a bad seaman?

A. In fact, anybody could say that to the mate.

Q. Likewise, you could say you think he ought to be fired?

A. No, sir, I wouldn't say that.

Q. You didn't, or you couldn't?

A. I didn't.

(Testimony of J. W. Carr.)

Q. The question is, could you?

A. I could say anything I desired, perhaps.

Q. You could say to the captain, couldn't you, I think this [2114] man ought to be fired?

A. In answering your question——

Q. The answer to that question is yes?

A. No. I say I could.

Q. But you never did to either the mate or the captain concerning Buckless?

A. No, sir. That is not my duty.

Q. Did you concerning Zinkiewycz or Rosen?

A. No, sir.

Q. And you did not recommend that Buckless should be fired? A. No, sir.

Q. Despite the fact that he let go the wheel and that he ran zigzag across the open sea?

A. That is right.

Q. If you wouldn't recommend that a quartermaster be fired when he can't even steer the boat straight—— A. I don't recommend.

Q. Under what circumstances would you ever see the captain?

A. I just merely report the fact to the captain, and that is entirely up to the captain to fire that man himself. That is what I do.

Q. When did you first notice Buckless steering a zigzag course?

A. On the second trip on the first voyage; that is, the trip coming home from the first voyage. He did fairly well [2115] going north.

(Testimony of J. W. Carr.)

Q. Did you report it to the captain at that time?

A. Yes, sir.

Q. Immediately? A. I did.

Q. Did the captain or not fire him?

A. No, sir.

Q. Is it a serious thing for the quartermaster to steer a ship in a zigzag course?

A. It is quite serious, provided you are close to shore. You could run the ship aground; a very serious matter.

Q. Also it is wasteful?

A. It could be, if you go into details.

Q. It increases the possibility of accidents on the sea?

A. It would, providing there is traffic.

Q. Now it is dangerous also to let a quartermaster who zigzags on a course take a boat down a channel into the harbor? A. It would be.

Q. It would be more dangerous than on the open sea, wouldn't it? A. It would be.

Q. But nevertheless Buckless piloted the boat, or rather was at the wheel of the boat that went into Claymont, Delaware, on the second trip? [2116]

A. That is right.

Q. Even though you had noticed him on the return trip?

A. I do not wish to say that he cannot steer a boat. I do say that he does not steer a good course at sea. When he has his mind to it he can steer.

(Testimony of J. W. Carr.)

Q. Then it is a matter not of his ability and his seamanship and sailorship, but whether or not he has a mind to? A. You may call it that.

Q. Whether he wants to steer straight?

A. It may be that. I don't know, but that is the way it happens.

Q. Well it is in Buckless' case?

A. He came up the channel all right. I had no complaint. But at sea he just let it go.

Q. Is it your testimony that when he wants to he can steer as well as any other seaman?

A. I don't say that, but he managed to bring it in.

Q. When he wants to he can steer a straight course, is that right?

A. I wouldn't say that, no.

Q. He can steer a straight course at any time when he wants to? A. I wouldn't say that.

Q. Will you explain in your own words what you mean?

Trial Examiner Persons: Explain to me what you mean. [2117] Will you state the best way you can what you think about Buckless' ability to steer a boat?

A. I don't think he is capable.

Q. (By Mr. Martin) You don't think he is?

A. No, sir.

Q. Now were you on the SS "Washington" in February and March of 1937? A. Yes.

(Testimony of J. W. Carr.)

Q. Were you on the same watch with Buckless then?

A. I don't recall when he was there.

Q. He was there from February 20 to March 8, 1937.

A. I don't remember.

Q. You don't remember whether he was on the same watch you were or not?

A. I don't remember that.

Q. Trial Examiner Persons: If he had been quartermaster on your watch you would remember it, wouldn't you?

A. I know that he was telling me that he was there, but I couldn't remember the incident.

Q. You don't remember anybody's report to you in February and March, 1937, that Buckless was a poor quartermaster?

A. I don't remember that.

Q. And when Buckless got on the "Washington" in 1938 neither Mr. Johannesen, the first mate, nor Captain Bergman, the captain, reported to you that you should watch that man [2118] Buckless because he is a poor quartermaster?

A. No, sir, they didn't report that.

Q. When did you ask Zihrlul if Buckless had paid him?

A. I asked him a day or two afterward if he was going to pay him, and he said no, he hadn't paid him.

Q. A day or two after the event?

A. Yes, sir.

(Testimony of J. W. Carr.)

Q. And was Zihrul sore at Buckless at that time? A. Well he didn't like it much.

Q. Had there been a draw between when Buckless missed his watch in Claymont and the time you spoke to Zihrul?

A. What do you mean by draw?

Q. That is a seaman's term. You know what that means? A. No, I don't believe I do.

Q. Drawing some money.

A. Drawing money, that is it?

Q. Advance wages.

A. They may have drawn some money. I don't remember.

Q. Was there a draw between Claymont and the time you talked to Zihrul? A. No.

Q. Was there a draw at Claymont?

A. There was, if I recall right.

Q. Did you ever ask Zihrul after that if Buckless had paid him? [2119]

A. I asked him before we arrived again, and he said, no, he never mentioned it.

Q. What does a quartermaster do in port, Mr. Carr.

A. He works with the mate on watch, under orders of the mate, helping discharge, taking care of the gangway, lines and so forth.

Q. Does he do any painting? A. No, sir.

Q. Does he do any sooging? A. No, sir.

Q. Does he go over the side and paint?

(Testimony of J. W. Carr.)

A. No, sir.

Q. Did you ever have any quartermaster go over the side and paint? A. No, sir.

Q. Do you remember the time when the vessel was at Port Neches, just after it left Port Arthur at the beginning of the second trip, and Mate Johannesen told you to tell Buckless to go over the side? A. No, sir.

Q. You don't remember that?

A. He didn't tell me to tell him to go over the side. He didn't tell me anything.

Q. You mean with reference to Buckless?

A. Yes, sir. [2120]

Trial Examiner Persons: You mean with reference to Buckless, he didn't tell you anything?

A. Yes, sir.

Trial Examiner Persons: Unquestionably he must have told you many things.

Q. (By Mr. Martin) Where was the mate when the mate told you to tell Buckless to go over the side?

A. I don't recall any incident where he told me to tell him to go over the side.

Q. Now do you remember any single instance wherein Zinkiewicz was noticeably slacking in his work?

A. Once or twice; a few times in chipping on deck.

Q. What was he doing that was slower than the others?

(Testimony of J. W. Carr.)

A. Just sitting there; didn't seem to be doing anything.

Q. Where was he sitting? A. On deck.

Q. What trip was this, and where was the boat, and what time of day was it? A. At sea.

Q. Where was the boat?

A. The boat was at sea, on voyage going north.

Q. First trip? A. First trip.

Trial Examiner Persons: First voyage?

A. Yes, sir. [2121]

Q. (By Mr. Martin) What were the other A. B.'s doing?

A. They were all working together.

Q. What was Zinkiewycz supposed to be doing?

A. Supposed to be chipping the deck.

Trial Examiner Persons: Chipping?

A. Yes, sir, rust.

Q. (By Mr. Martin) Isn't it a fact, Mr. Carr, that a sailor will take a minute or two out to take a little rest once in a while if he is chipping the deck? A. I suppose so.

Q. Don't they all do that? A. Right.

Q. You don't expect to have them work every minute of the four hours they are supposed to be working?

A. No, sir, we would not require that, not necessarily.

Q. Isn't it a fact that Zinkiewycz at that time might have been taking a minute or two out?

(Testimony of J. W. Carr.)

A. He couldn't have been the entire four hours.

Q. You mean you have seen him sit there when he was supposed to have been working four full hours? A. No, sir, not four full hours.

Q. No.

A. I didn't say that he sat there and didn't work for four hours. I did say that he was not doing nearly as much work as the others. It was that noticeable. [2122]

Q. What was noticeable, you mean?

A. A man working, you will notice two or three working, and when one is not working it is noticeable.

Q. What did you do in this particular instance we are talking about?

A. I didn't do anything about it.

Q. Wasn't he working under you as second mate on the ship? A. No, sir, absolutely not.

Q. Who was he working under?

A. Under the chief mate and boatswain.

Q. Did you point out to the mate that he was working there slowly? A. I did not.

Q. Or the boatswain? A. No, sir.

Q. The boatswain is the boss of the ordinary seamen and the A. B.'s on a job like that, isn't he?

A. He receives orders from the mate.

Q. And gives them to the A. B.'s and ordinaries? A. That is right.

Q. Now what was the other instance that you mentioned when you saw Zinkiewycz slacking?

(Testimony of J. W. Carr.)

A. Well practically all the work they did it was noticeable, whether they were sooging, chipping or what.

Q. Did you ever mention it to the mate or the captain? [2123]

A. No, sir.

Q. Even though you noticed it?

A. I did. Because it was not my work. It was on deck.

Q. So, so far as you personally know, any slacking on the part of Zinkiewycz did not contribute to the reasons as to why he was discharged, is that correct?

A. Well I don't know. I imagine it did.

Q. As far as you personally know, you don't know, do you?

A. I don't know that.

Q. And it is your testimony, is it, that you never saw Rosen slacking in his work?

A. I wouldn't say that.

Q. Well did you ever see Rosen slacking in his work?

A. I didn't pay any particular attention to it.

Q. Or lagging in his work.

A. Because I sleep in the morning, and that is when he worked, from 8:00 to 12:00, in the morning.

Q. It is your testimony that you never did see him?

A. I have seen him when he would be on deck, but I didn't have time to pay any attention to his work.

(Testimony of J. W. Carr.)

Q. So that you have never seen him lagging in his work.

A. I wouldn't say that. I would say I never noticed him working.

Q. Answer this question "yes" or "no." Have you ever seen J. Gordon Rosen lagging in his work on the SS "Washington" in [2124] 1938?

A. I couldn't say that, because I have never seen him work. How could I?

Q. Answer that question "yes" or "no." Please read it back to him, Mr. Reporter.

(Question read.)

Mr. Pipkin: I think the record is clear.

Trial Examiner Persons: I think the record is clear. I think Mr. Carr has displayed a little excess of caution. Read the question back, Mr. Etter.

(Question read.)

A. Well I will say, no, in that case.

Q. (By Mr. Martin) Did you ever attend any union meetings on the "Washington"?

A. No, sir.

Q. Did you see a sign advertising the fact that there would be a meeting? A. I did.

Q. Did you see a number of signs? A. Yes.

Q. During what period of time were union meetings held on the "Washington"?

A. I don't know what time it was. I just noticed the sign.

Q. How long were you on the "Washington" in 1938?

(Testimony of J. W. Carr.)

A. I have been there for quite a few years.

[2125]

Q. I beg pardon?

A. I have been there quite a few years.

Q. And you were on the "Washington" during the entire period or month in 1938 up to and including July 14, 1938, were you? A. I was there.

Q. Did you ever see any notices of union meetings prior to June 2, 1938?

A. I don't remember if I did or not.

Q. What percentage of the deck force were members of the union? A. I don't know.

Q. Prior to June 2, 1938? A. I don't know.

Q. What percentage of the deck force were union members between June 2 and July 14, 1938?

A. I don't know.

Q. What do you think?

A. You mean how many do I think?

Q. Yes. A. I don't know.

Mr. Williams: Your Honor, I think we should except because it is purely speculative, and has no probative value in this case.

Trial Examiner Persons: Objection overruled. The record [2126] will stand.

Mr. Martin: That is all I have at this time, Mr. Examiner.

Trial Examiner Persons: Mr. Mandell.

Q. (By Mr. Mandell) Just two or three questions, Mr. Carr. I believe you testified that the

(Testimony of J. W. Carr.)

master of the ship discharges all men who are to be discharged?

A. The master and the mate. It is between them.

Q. Or the chief mate?

A. Not all men in the engine department, nor in the steward's department.

Q. Only the deck department, is that your testimony?

A. That is what I am referring to, yes.

Q. Now could you tell us at the time Mr. Buckless missed his watch, where was the vessel?

A. In Claymont, Delaware. [2127]

Q. What time did the vessel leave that port?

A. Between 4:00 and 8:00, on July 5.

Q. Between 4:00 and 8:00? A. A. M.

Q. Would you say it was very much before 8:00 o'clock?

A. It was perhaps 6:00 o'clock, or something around there. I wouldn't say exactly.

Q. Around 6:00 o'clock in the morning?

A. I would say something like that.

Q. In your experience as a mate on the "Washington" have you ever taken on seamen at a port other than Port Arthur? A. Yes.

Q. Have you ever discharged seamen at a port other than Port Arthur?

A. I have never discharged anybody.

Q. When I say, have you, I mean the ship as a whole. Have seamen ever been discharged at a port other than Port Arthur?

(Testimony of J. W. Carr.)

A. Men have gotten off to go to hospitals, and was practically discharged, and some missed a ship.

Q. And some have sometimes violated some ship rule, and the master just discharged them, and got another man?

A. It is the rule to bring them back to Port Arthur.

Q. Suppose a man violates one of the shipping rules, is he discharged other than at Port Arthur?

A. It is a rule mostly to bring the men back to where they [2128] sign on.

Q. Even though they prove incompetent and they are unsafe for the ship?

A. It all depends on what the nature of the case is.

Q. Suppose a man, a quartermaster, steers a vessel off in the breeze——

A. Yes.

Q. Would you consider that man very unsafe? You would consider him a very unsafe man, wouldn't you?

A. You could reprimand him, and give him a chance, and perhaps he will do better.

Q. I asked you would you consider a man who steers a ship off course ten degrees, would you consider him an unsafe man at the wheel?

A. No, he is not safe. You can watch him and make him stay on the course and do better.

Q. Of course, if you have to keep a mate there to watch him, the mate might as well stay. Could

(Testimony of J. W. Carr.)

you safely leave a quartermaster at a wheel who steers a ship ten degrees off course?

A. If I am there I can watch him all the time.

Q. Are you there all the time?

A. When I am on watch, yes.

Q. On the watch that Mr. Buckless was on, you were there all the time, were you? [2129]

A. On the bridge, yes.

Q. And that is how you got off ten degrees?

A. No. I am on the top bridge.

Q. You didn't help him get off ten degrees, did you? A. No.

Q. At any rate, we do agree it is very dangerous to have a quartermaster steering a ship that would get off the course as much as ten degrees?

A. It would be if he continued that way through-out, yes.

Q. In 1938, June and July, 1938, would you say from your experience there was any scarcity in getting good quartermasters in any port in the United States? A. Well, I don't know.

Q. Have you ever had any difficulty getting quartermasters anywhere?

A. I don't hire the men. I don't know.

Q. Any time there was need of a quartermaster aboard the ship he was always gotten?

A. I think so.

Q. There was no difficulty, so far as you know?

A. I don't think so.

(Testimony of J. W. Carr.)

Q. However, Mr. Buckless remained there for some time. Is it very unusual for one seaman to stand watch for another seaman, sort of help him out?

A. It would be. It is not unusual providing he gets permis- [2130] sion from the mate.

Q. I didn't ask you anything like that at all. Just answer my questions.

Trial Examiner Persons: Just ask questions please.

Mr. Pipkin: We object to the side bar comments of counsel.

Trial Examiner Persons: The examining attorney will be instructed to confine his remarks to the asking of questions.

Q. (By Mr. Mandell) Now, I just want you to answer my question. Is it unusual for a seaman to stand watch for another seaman?

A. A seaman is not allowed to stand watch for another unless he has been instructed by the mate to do so, or has permission.

Q. Is it very unusual for one seaman to stand watch for another?

A. It is very unusual.

Q. You have never seen it done?

A. It has been done.

Q. As a matter of fact, it is often done?

A. No, it is not.

Q. You came up from the ranks?

A. What do you mean?

(Testimony of J. W. Carr.)

Q. Did you ever serve as an ordinary seaman, able seaman and quartermaster? [2131]

A. Yes, sir.

Q. Did you ever stand watch for another man?

A. I have.

Q. Did you ever have another man stand watch for you?

A. If we had it prearranged, yes.

Q. Did any other man ever stand watch for you?

A. If we prearranged it.

Q. You have seen seamen who came back aboard the ship so drunk that they couldn't stand their watch, and another one of their fellow seamen would take his watch?

A. He would have to suffer the consequences if he did.

Q. Have you ever seen that? A. I have.

Q. And you have seen that seaman remain aboard the ship?

A. Sometimes, and sometimes, no.

Q. Now, where is this port of Claymont?

A. It is port of discharge for The Texas Company, Claymont, Delaware.

Q. Is that inland waters? A. It is.

Q. Now, steering in inland waters is more difficult than on the open sea?

A. Securing the dock, you mean?

Q. No. Proceeding up in inland waters.

A. It might be easier to steer a ship. [2132]

Q. How is it around Claymont?

(Testimony of J. W. Carr.)

A. There is plenty of space. It is easy to steer; calm water.

Q. Easier than out in the open sea?

A. It would be, depending on the nature of the sea and the current.

Q. Let me ask you this. From your experience as a navigator, isn't it true that when vessels are in inland waters extra precaution is taken in steering the ship? A. Yes.

Q. Why?

A. It depends on the channels. Where there are narrow channels, and current running, it would be easier to ground the ship.

Q. Isn't it true that, for instance, you never let an ordinary seaman steer a vessel in inland waters?

A. According to law, no, but he may be capable.

Q. I am talking about as a navigator, what the law says. An ordinary seaman is not permitted to steer a vessel in inland waters, that is true, isn't it?

A. Yes.

Q. It requires a capable A. B. or quartermaster to steer a vessel in inland waters? A. Yes.

Q. That is true, isn't it? A. Yes, sir.

[2133]

Q. Certainly you wouldn't let an incompetent man, that you know is incompetent, steer a vessel in inland waters, would you?

A. No, I couldn't.

Q. And you certainly would not let a man,

(Testimony of J. W. Carr.)

though competent, who is careless steer a vessel in inland waters, would you? A. No.

Q. Now, Mr. Carr, assuming that Mr. Buckless was as drunk as you say he was, would you let him stand watch?

A. Not if he was drunk, no.

Q. What would you do? Suppose he would come back to the ship drunk, and feeling it was his duty, that he ought to stand watch, he wanted to stand watch, what would you do?

A. I would tell him the best thing for him to do would be to go to bed.

Q. And you would get someone else——

A. Yes, sir.

Q. To take his watch? A. Yes, sir.

Q. That is exactly what happened, with the exception that you didn't tell him to go to bed?

A. He did not. When I came out on deck he was out.

Q. If he had come aboard drunk and reported to get ready for watch duty you would have told him to go to bed?

A. Well, if I thought he was in danger of endangering him- [2134] self or someone on deck.

Q. You wouldn't let a drunk man stand watch, would you? A. No.

Q. You would have told him to go on and go to bed? A. Yes, sir.

Q. Neither would you let a man who is habitually under the influence of liquor steer your ship?

(Testimony of J. W. Carr.)

A. Not if he was drunk, no.

Mr. Mandell: I think that is all.

Q. (By Trial Examiner Persons) Mr. Carr, for the benefit of the record and the benefit of all of us landsmen who have to read the record, will you describe what is meant by sooging right now?

A. It is a solution of soap and water to wash, like we do this wall, used to wash down a ship.

Q. Used to wash down the ship?

A. That is right, paint work.

Q. In regard to your responsibility for your men on your watch, it is your duty to report to the mate anything that they do that is worthy of notice, is that right? A. Yes, I could.

Q. I said that is your duty to do it.

A. No, sir.

Q. How do those men get credit, if the mate who is on watch does not report it? [2135]

A. As a rule, as I say, the mates do report that he is a good man, or is not. However, I do not say that is their duty.

Q. It is customary at least?

A. You might say customary, yes, sir.

Q. In the same way, is it customary, or is it the duty of the mate to report things that they do which will stand against their record on the ship?

A. It is the duty to report any unusual happenings during the watch to the mate and master that would be dangerous to the ship or the cargo.

(Testimony of J. W. Carr.)

Q. Well, if you had a man rated as an A. B., and he was a capable seaman, would it be your duty to report that to the master?

A. It would not be my duty. I could.

Q. I take it you probably would?

A. I would probably.

Q. My difficulty is this. The situation on ship-board is a bit different from the situation in a factory? A. Yes, sir.

Q. The mate runs the crew on deck, the deck crew? A. Yes, sir.

Q. The captain has the right to hire and fire?

A. He is in command of the ship, yes, sir.

Q. If a man is put on he goes up to the captain and the [2136] captain signs him on?

A. Yes, sir.

Q. The work on the ship is divided into watches?

A. Yes.

Q. As second mate, you have charge of a watch?

A. Yes, sir.

Q. And as the mate on that watch you have knowledge of the capacity and the service of the men on that watch? A. Yes, sir.

Q. And you have knowledge of the credible things that they have done, and of other things that they do; and it is your duty as second officer to inform the mate and the captain about the members of your watch?

A. It is like working in a factory or anything else. If a man is a foreman, and somebody stands

(Testimony of J. W. Carr.)

out in the crowd, if he wishes to recommend him, and say he is a good worker, he may do so; and, if not, that is usually the way it goes.

Q. If a second mate were to perform a highly meritorious act, known only to the first mate, and the first mate did not report it to the captain, would that second mate be entitled to feel aggrieved?

A. Well, that happens.

Q. Yes, I know it does, wherever there are men at work. A. Yes.

Q. But it is a duty of the first mate to let the captain know? [2137]

A. He is the superior of the second mate.

Q. Isn't it your duty in the same sense to see that the men are credited with meritorious things they do?

A. When he is working under my command, I do, yes.

Q. Changing over to the matter of the ten degrees, which has doubled since yesterday, when we had five degrees in course—I think you seamen have not given credit to the Trial Examiner because he is a landsman. I want you to lay ten degrees down, just straight; just take a straight line, like straight down the street, and lay down an error of ten degrees.

A. Lay down an error of ten degrees?

Q. Yes, and tell me how far you would have to go on that wrong course before you would be a mile off your course.

(Testimony of J. W. Carr.)

A. They would not have to go very long; about half an hour.

Q. If you can make a ten degree error on one side you can make a ten degree error on the other side?

A. Yes, sir.

Q. And you have got twenty degrees error?

A. Yes, sir.

Q. As a matter of fact, is it possible for any man rated as a quartermaster to be ten degrees off course?

A. It is a fact; in fact, farther, some of them. It is quite easy to get that far off. It depends on the nature of the sea and so on, but it happens often. [2138]

Q. Nothing was said in this connection about there being hard conditions, and as far as the record goes, we assume it was a calm clear night. The captain yesterday said about five degrees, by the wake, you stated ten degrees off, by compass?

A. Yes, sir.

Q. Is that right?

Mr. Pipkin: Mr. Examiner, I hate to interrupt at this time. Yesterday the captain, as I recall, said it was reported.

Trial Examiner Persons: No, he said he didn't need to be on the bridge; that he could look at the wake.

Mr. Pipkin: But I also recall the testimony showed it was reported to him that he was off the course.

(Testimony of J. W. Carr.)

I want to take an exception in the record at this time to the Examiner's comment on the matter, and the manner in which it was said in examining this witness.

Trial Examiner Persons: The exception will be noted. But I just remark that it doesn't greatly matter, as the witness agreed with the Examiner.

Q. I said if he could be off ten degrees one way he could be off ten degrees the other, is that correct?

A. Yes, sir, he could.

Q. One more question. I confess I am not satisfied, Mr. Carr. What degree of accuracy is it fair to expect from [2139] a capable quartermaster in steering the course laid down?

A. Two degrees, something like that, because the gyro compass, Iron Mike, goes over two degrees to one side.

Q. A capable really competent quartermaster, a man to be rated really a quartermaster, if he kept it at all times within two degrees of the course set, that is all right?

A. Yes, that is a good course.

Q. That would be good seamanship?

A. Yes, sir.

Q. About Mr. Zinkiewicz and his alleged incompetency, the question is based on the fact that the Trial Examiner has not seen the man. What was he like, was he naturally a slow thinking, slow moving man?

(Testimony of J. W. Carr.)

A. He appeared to be intelligent, but moved very slowly.

Q. Habitually? A. Yes, sir.

Q. Would you say that he seemed lagging in his work, and what you noticed was due to this characteristic, or that he was consciously shirking?

A. I would think it was consciously shirking.

Q. Would you say that he shirked his work habitually, or that he did it on occasions?

A. I think that he was capable, but I believe he did it on occasions.

Q. In your experience at sea, how seriously has the offense [2140] of missing a watch due to unwise indulgence in alcoholic beverages been considered?

A. It all depends. It is just like anything else. If you go and get tight, and have no more respect for your job, you might lose it.

Q. Would you say it was usual for a man that had been guilty of such to be dismissed?

A. It happens quite often.

Q. Is it usual?

A. Yes, sir, nowadays.

Q. Would you say the offense was less great if it happened while the ship was in port than if it happened while the man was expected to stand watch at sea?

A. At sea it would probably have a greater effect than at port. It all depends on their navigation of the ship.

(Testimony of J. W. Carr.)

Q. Would you say, based on your observation and experience, that the average captain, in passing judgment on such an offense, would mitigate his judgment somewhat if it happened on a holiday, July 4?

A. That is entirely up to the captain, I am sure.

Q. As a matter of observation, do they usually deal less harshly if they are guilty of that on holidays than on other occasions?

A. Well, if a man had a duty to perform, I should not think so. [2141]

Q. No allowance would be made?

A. I do not believe so.

Q. Were there union meetings held on the "Washington" during the time these men were aboard, Buckless, Zinkiewicz and Rosen?

A. I understand there were. However, I don't know. I never attended one.

Q. If it were not a Trial Examiner, but the captain, asking you whether they had union meetings, what would you have said?

A. Well, I never attended.

Q. What would you have told the captain?

A. It is only hearsay that they were. I have been told that there were meetings there.

Q. You saw the notice?

A. I saw the notice, yes.

Q. Who told you there were meetings held?

(Testimony of J. W. Carr.)

A. I often hear them discussing it. The sailors see me, and say so.

Q. Did you ever talk to any of the men personally and have them tell you that they had been attending meetings?

A. Yes, sir, they told me that they had attended meetings.

Q. Did any of these three men concerned here directly, Buckless, Zinkiewycz or Rosen, tell you that they had attended union meetings?

A. Yes, sir. [2142]

Q. Which one?

A. Buckless, my quartermaster, told me he attended meetings.

Q. He told you? A. Yes, sir.

Q. Neither of the other two?

A. Well, I didn't have a chance to talk to them.

Q. They were not on your watch?

A. Zinkiewycz was, of course.

Q. But you were on the bridge, and he was on the deck? A. Yes, sir.

Q. You yourself belong to a union?

A. No, sir, not at the present time.

Q. You do not belong to the Mates' Union?

A. Not at present.

Q. Would you say there is room for union organization on shipboard, Mr. Carr?

A. Not knowing, I couldn't say.

Q. Pardon?

(Testimony of J. W. Carr.)

A. I couldn't say. It seems to me that they are pretty well organized, so far as the "Washington" is concerned. Other ships, I don't know whether they are or not.

Q. You have sailed on ships on which there was a union organization?

A. There was on the "Washington", yes, sir, before I became mate. [2143]

Q. Since you became mate?

A. Just on the "Washington." I became mate on the "Washington."

Q. Would you say a union might perform a useful function on board ship?

A. Well, I don't know. It seems to me that everything is all right.

Q. To be more specific, if the men have a union organization, and they have a union meeting, and they decide they have a justified complaint about the food, and they appoint delegates to see the captain, that is quite correct? A. They do.

Q. That is quite correct in your estimation?

A. It has been carried on that way for years, without unions.

Q. It is nothing new? The only thing new is the permanent organization of the union?

A. Yes, sir.

Q. Men have presented such complaints from time immemorial? A. Yes, sir.

Q. And that is quite correct procedure?

A. It has been and I think it is, yes, sir.

(Testimony of J. W. Carr.)

Q. You see no objection to that sort of thing?

A. No, sir.

Q. If the complaint was not based on food or quarters, but [2144] was based on overtime pay, would you say there was anything wrong in that procedure?

A. It all depends on the nature of the pay and what it was for, if they were justified.

Q. If they just sincerely thought they were justified?

A. Well, that is a matter to decide between the two parties.

Q. It would be quite all right for them to take collective action, instead of going singly to the mate and the captain?

A. Yes, sir, I believe that will be right.

Q. Would you say, and I would like you to answer this rather carefully, would you say there was any danger in having union organization on board a ship?

A. Any danger? I don't think so, none whatever. [2145]

Q. As far as you are concerned as second mate, you think you could go on and carry out your duties, and get along with the members of your watch, with a union organization aboard?

A. I manage to get along with everybody, so it wouldn't make any difference to me.

Trial Examiner Persons: Mr. Pipkin, anything further?

(Testimony of J. W. Carr.)

Mr. Pipkin: Judge Williams has something in mind that he wants to ask him, if there is no objection.

Trial Examiner Persons: The general rule is one man to examine, but I take it that under the conditions, Mr. Van Dusen being away, the other attorneys will agree.

Mr. Martin: That is quite satisfactory.

Trial Examiner Persons: Very well.

Redirect Examination

Q. (By Mr. Williams) Mr. Carr, tell the Examiner where Claymont, Delaware, is, geographically, on some stream?

A. On the Delaware River, below Marcus Hook.

Q. How far is Claymont from the open sea?

A. Seventy-five miles.

Q. Those are called inland waters, are they not?

A. Yes, sir.

Q. Do you take a pilot? A. Yes.

Q. Where did that pilot get on?

A. At the sea buoy at the bar. [2146]

Q. Where did they get on coming out?

A. At the dock.

Q. How long does he stay on that vessel?

A. Until the vessel has cleared the sea buoy.

Q. Until the vessel strikes the high seas?

A. Yes, sir.

Q. Tell the Examiner whether or not the navigation channels from Claymont, Delaware, to the

(Testimony of J. W. Carr.)

open sea are marked with what is known as aids to navigation? A. Yes, sir.

Q. Lights, buoys and so forth? A. Yes, sir.

Q. Is that true or not true?

A. That is true.

Q. Tell the Examiner where the pilot takes his station when you are coming down the river.

A. Takes his station on the bridge by the quartermaster. Sometimes he steers himself.

Q. Sometimes he steers himself?

A. Yes, sir.

Q. Now is it a fact or is it not a fact that in coming down that river to the open sea you steer by courses, or do you steer by the aids to navigation?

A. Steer by the aids to navigation.

Q. All right, tell the Examiner who gives the orders about [2147] changing the wheel?

A. The pilot.

Q. To port or to starboard?

A. The pilot does.

Q. What does he say to the quartermaster when he wants him to move the wheel over a little bit?

A. Tells him right or left, or stay on this range.

Q. Then it is a fact, is it not, that the only function performed by that quartermaster in getting down the river with a pilot aboard is that he furnishes the physical effort to move that wheel?

A. That is it.

(Testimony of J. W. Carr.)

Q. (By Trial Examiner Persons) Did Mr. Buckless steer under the direction of the pilot when you were present on the ship? A. Yes, sir.

Q. Did the pilot make any comment to you about Mr. Buckless' steering?

A. I don't recall now if he did.

Q. (By Mr. Williams) To clear that point up, that quartermaster, in getting down the river under the direction of the pilot, is he required to observe the compass at all?

A. It all depends. If we should hit fog——

Q. But ordinarily? A. Ordinarily not.

Q. He doesn't use a compass? [2148]

A. He can use it, but he usually uses the aids to navigation, where there are ranges to steer on.

Q. Markers, usually known as markers?

A. Yes, sir.

Q. From marker to marker? A. Yes, sir.

Q. You pass one marker on one side or the other? A. Yes, sir.

Q. At a certain distance? A. Yes, sir.

Q. And the pilot is the one that gives those orders, is he not? A. Yes, sir.

Q. All right, when you reach the open sea, what is called the high seas—— A. Yes, sir.

Q. Do you mean to say that they would get off ten degrees and stay off, or just wiggle off?

A. Just wiggle off.

Q. In other words, it would only be off ten degrees for a very few minutes, perhaps?

(Testimony of J. W. Carr.)

A. Maybe not that; back and forth.

Q. Until he noticed it himself, or the mate called attention to it?

A. I called attention to it a number of times. Sometimes he [2149] would notice it himself.

Q. In other words, in getting off that course the quartermaster sees it sometimes?

A. Yes, sir.

Q. And he is going to try to get back?

A. Yes.

Q. Then when the quartermaster zigzags back and forth on that course it indicates he is not giving strict attention to his course as given to him? A. That is right.

Mr. Martin: I would like to know whether counsel is testifying or asking questions or what.

Q. (By Mr. Williams) What does it indicate?

A. It indicates he is not paying attention to his steering.

Q. What does that indicate?

A. Indicates he is not paying attention to his course.

Q. Tell the Examiner this, the quartermaster on duty, is he or not supposed to keep his hands on the spokes of the wheel at all times?

A. Supposed to keep them there at all times.

Q. When can he leave the wheel?

A. Only when he is properly relieved.

Mr. Williams: That is all.

Q. (By Mr. Pipkin) As I recall your state-

(Testimony of J. W. Carr.)

ment, you said five to ten degrees. Was it always ten degrees? [2150]

A. Not always. It may sometimes be four, or three, or ten.

Q. Well what was the average of the times you saw Buckless off his course, what would you say would be the average variance?

A. Between two and ten. It might average six or seven degrees, or five degrees, the average.

Q. Well for us landlubbers, as the Examiner calls us, a man off his course five degrees, and he was checking himself, how far would he ordinarily go before he corrected it?

A. Before he came back on the course?

Q. Before he came back on the course.

A. Well it would not take but a very little while, if he was a mind to put it back on the course.

Q. When Buckless was standing with his hands on the wheel and paying attention to his work he could stay fairly close to the course?

A. Fairly close, yes.

Q. And when he did pay attention did he stay fairly close to his course? A. He did.

Q. That compass is right there before him, with a light under it at night?

A. It is, yes, sir.

Q. Did you report his missing this watch to the captain? A. I did.

Q. The Examiner asked you the difference between getting drunk at port and at sea. Is it customary for a man to get drunk at sea?

(Testimony of J. W. Carr.)

A. No, sir.

Q. Isn't that rather an exception?

A. It is a rare exception to get drunk at sea.

Q. What is your union affiliation, Mr. Carr?

A. I used to belong to the Seamen's Union when I was on deck.

Mr. Pipkin: I believe that is all.

Recross Examination

Q. (By Mr. Martin) Mr. Carr, on the open sea what is the function of the mate up on the bridge with the quartermaster, what does the mate do there?

A. He is in charge of that watch and assists in navigating the ship to the best of his ability, to see that a good lookout is kept, that the quartermaster steers a good course while he is on watch.

Q. Is the steering wheel on the bridge?

A. There are two, on some ships, on the top bridge and in the wheel house. Of course it would be on the bridge.

Q. When you use the wheel on the bridge——

A. That is the only place we use it, because it is on the bridge. [2152]

Q. When do you use the one in the wheel house?

A. When the ship is loaded and at sea. But coming into port, and when the ship is light, you can't see.

Q. Is the wheel house below the bridge?

A. The wheel house is on the bridge; and then there is a top bridge on top of that.

(Testimony of J. W. Carr.)

Q. There is a wheel in the wheel house, and another wheel on the top bridge?

A. On this particular ship, yes.

Q. Now is it the duty of the mate on watch to stand over the quartermaster a good deal and help him watch the course?

A. He can see from the compass on top whether he is on or off.

Q. That is, you stay on the top bridge, and the quartermaster is down in the wheel house?

A. On this ship, on the "Washington", yes.

Q. Would that be your custom with Mr. Buckless? A. Yes.

Q. Normally you stay on top, and Buckless would be in the wheel house?

A. Sometimes I might be below in the wheel house, and sometimes I am on top.

Q. Now isn't it a fact that the quartermaster has no discretion as to turning the wheel? Isn't he supposed to keep it a certain way until you change the course? [2153]

A. If he is given a course he steers that course until given orders to change the course.

Q. He does not have any discretion about what course he will keep the boat on, does he?

A. If he is ordered to steer a certain course that is the course he will steer.

Q. That is right. Now what does the quartermaster do on inland waters when there is a pilot aboard?

(Testimony of J. W. Carr.)

A. He receives orders from the pilot.

Q. Just as he receives them from the mate on the open sea?

A. Not the same, no. He receives orders from the pilot, but a different order, because the sea and inland refer to different rules.

Q. Is the mate on watch in the pilot house along with the pilot and quartermaster?

A. Yes, sir.

Q. On boats in inland waters?

A. Yes, sir.

Q. All the time?

A. Yes, sir, there is a mate there at all times.

Q. Isn't it a fact that when the "Washington" is in the lower Delaware Bay at night the pilot gives the quartermaster the course by compass?

A. He could; not necessarily.

Q. Doesn't he, on lower Delaware Bay? [2154]

A. It all depends on the nature of the weather.

Q. What was the weather on the evening, or the early morning hours, of July 4, when Buckless was piloting the "Washington"?

A. He didn't go out until July 5, early morning hours.

Q. But he took the boat in?

A. He was steering by ranges, lights, going up the river.

Q. Isn't it a fact that on the morning of July 4, 1938—

Mr. Pipkin: They went in July 3.

(Testimony of J. W. Carr.)

Mr. Martin: I stand corrected. Thank you.

Q. But they went in during the early morning hours of July 3 with Buckless as quartermaster?

A. You mean docked?

Q. On the 12:00 to 4:00 watch at night.

A. No. Buckless goes off at 12:00 to 4:00. She docked after 4:00 o'clock, I believe it was, in the morning.

Q. How long does it take to get from the ocean to Claymont, Delaware, over that 75 mile stretch?

A. It all depends on how you strike the tide.

Q. How long did it take on the early morning of July 3, 1938?

A. I would have to look that up in the log book.

Q. Roughly, how long?

A. I just don't know what time it did take.

Q. Isn't it a fact that Buckless was piloting that boat, was steering the boat, when it was in lower Delaware Bay that [2155] morning?

A. No, they arrived that evening. Lower Delaware Bay is out in the ocean.

Q. What time that day did the boat leave the ocean and enter lower Delaware Bay?

A. I would have to look that up.

Q. What time that evening did it arrive at Claymont?

A. It did not arrive that evening.

Q. When did it arrive at Claymont?

A. I would have to look it up in the log book.

Q. Do you know when the boat arrived at Claymont, Delaware?

(Testimony of J. W. Carr.)

A. I would have to look it up.

Q. Do you know when the boat arrived at Claymont, Delaware, the 3rd of July, 1938?

A. I think it was around midnight. I am not sure. I would have to look it up to be more definite.

Q. Well the facts are that you don't know when the boat arrived? A. I wouldn't say that.

Q. And you don't know when it went through Delaware Bay on that trip, lower Delaware Bay?

A. It could have been that evening of the 2nd, because it arrived the 3rd.

Q. But you don't know, do you?

A. Not the exact time. [2156]

Q. What is the longest period of time you ever left Buckless in the wheel house alone while you were on the same watch with him during the night time on the "Washington"?

A. Oh, sometimes an hour or two.

Q. Now you say that you were responsible for Buckless steering the boat? A. Yes, sir.

Q. During the two watches that you were on with him, is that correct? A. It is.

Q. Did the captain or the mate ever complain to you that Buckless was not steering a straight course? A. The captain, yes, sir.

Q. Did he correct you for it?

A. He told me to watch his steering and correct him.

Q. Did he threaten to fire you if that steering of Buckless continued?

A. No, sir, he did not.

(Testimony of J. W. Carr.)

Q. And you did not in fact get fired for Buckless' zigzag steering, did you?

A. I have never been fired in my life.

Q. How long has it been since it has become usual to fire men for drinking, from boats?

A. I don't know how long it has been.

Q. Well you said lately it has become usual?

[2157]

A. Ships I have been on, yes.

Q. Does that go back a matter of years?

A. Years.

Q. Or months?

A. Some two or three or four or five years.

Q. Two or three or four or five years?

A. Yes, sir.

Q. And would you say that during that period men have been fired from boats you have been on for drinking more than was customary in your experience prior to that, is that correct?

A. Well it all depends on the type of man he is. If he is once given a chance, and they figure he is not worth while, they let him go.

Q. During that period have you been on Texas Company boats? A. What period?

Q. The last four or five years.

A. Since 1935.

Q. How do you explain that men have been fired from Texas Company boats for drinking during that period more than they were fired from boats that you were on for drinking during previous years?

(Testimony of J. W. Carr.)

A. I am just referring to this ship particularly. I don't know about other ships.

Q. Then is it your testimony that men have been fired for drinking, from the "Washington", during the last two years [2158] that you have been on it?

A. Fired for drinking? No, sir, they are not fired for drinking.

Q. How long in all have you been on the "Washington"? A. I first went there in April, 1935.

Q. 1935? A. Yes, sir.

Q. Had you been on Texas Company boats before? A. No, sir.

Q. Have you noticed a change in the policy at any time since you have been on the "Washington" concerning firing men for drinking?

A. Do you mean from any other ship?

Q. No, on the "Washington".

A. Any change?

Q. Yes.

A. No, sir, it is practically the same.

Q. Well is it your testimony that you did notice a change on the "Washington" from any other boat you were ever on?

A. There might be more discipline; might be enforced more so than on other ships.

Trial Examiner Persons: Will you read the question, Mr. Etter?

(Question read.)

Trial Examiner Persons: More than on other ships? [2159]

A. It might be.

(Testimony of J. W. Carr.)

Q. That is what you said? A. Yes, sir.

Q. (By Mr. Martin) You mean a tougher skipper? A. No.

Q. Harder disciplinarian?

A. I wouldn't say tough. But I do say it might be enforced more.

Q. Please let's not get speculative. We are not concerned with what might be. We are concerned with what was. Now in your experience, is Captain Bergman a stricter disciplinarian than other captains you have worked under?

A. No, sir, not so much. He is stricter than some, and some not.

Q. How do you account for the fact that men were fired on the "Washington" for drinking, and in your experience were not fired from other ships for drinking? A. I didn't say that.

Q. How many men have been fired from the "Washington" for drinking during the last three and a half years when you have been on it?

A. I don't know.

Q. Name any other than Buckless.

A. I don't know.

Q. Can you name me one? [2160]

A. At this particular instance that one is fresh in my mind, and I remember it. The others come and go, and I have forgotten them. I do not recall.

Q. Can you name one?

A. There have been some perhaps, but I have forgotten their names.

(Testimony of J. W. Carr.)

Q. Mr. Carr, I believe you testified, and correct me if I am wrong, that the United States Navigation Laws prohibit the use of any ordinary seamen at the wheel on any inland waters, whether a pilot is on the boat or not. Is that correct?

A. No, I didn't say that.

Q. Is that correct?

A. I didn't say that.

Q. Is that true? A. I don't know.

Q. Well will you tell us what the law is with reference to the use of ordinary seamen to steer the wheel, to steer the boat in inland waters?

A. I could look that up quickly.

Q. Do you know what the law is?

A. I have read it, but I do not recall it now.

Mr. Martin: That is all.

Trial Examiner Persons: I think, unless we can get through with Mr. Carr briefly, we might take a recess now.

Mr. Pipkin: I only have one or two questions.
[2161]

Trial Examiner Persons: I want to ask one question.

Q. Mr. Carr, at all times when Buckless was quartermaster under your supervision the steering gear of the "Washington" was in completely seaworthy condition?

A. Yes, sir. It is tested and examined before leaving each port an hour before leaving port.

(Testimony of J. W. Carr.)

Q. None of that ten degree error could have been due to defects of the steering gear?

A. It was not, on this particular ship, no, sir.

Trial Examiner Persons: Mr. Pipkin.

Redirect Examination

Q. (By Mr. Pipkin) None of the one, to two, to three, to four, to five, to six degree errors would be due to a ship defect, would they?

A. Not on this particular ship, because it was good steering gear.

Q. And when you answered the Examiner's question about ten degrees you meant any variance between? A. Any variance between.

Q. Did you have to be on the bridge to see whether or not the quartermaster was keeping his course? A. It is my duty.

Q. Do you have to be in the wheel house?

A. Not necessarily, because there is a compass on top, and I merely have to look at the compass to see if he is steering [2162] the course.

Q. And a bright night you can also see the wake? A. Yes, sir, you can.

Mr. Pipkin: That is all.

Trial Examiner Persons: Are we through with the witness? You are excused, Mr. Carr.

We will recess at this time for ten minutes.

(Short recess.)

Trial Examiner Persons: I think we are ready.

ERNEST ZIHRUL

a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

Recross Examination

Mr. Martin: I am recalling the witness with Mr. Pipkin's permission to ask him a couple more questions.

Q. Mr. Zihrul, you testified yesterday concerning union meetings while Rosen, Zinkiewycz and Buckless were aboard the "Washington" in 1938. Now did the union meetings continue after those three men left the boat?

A. That I couldn't tell you, because I left the forecandle and went on the bridge as second mate.

Q. But after that did you continue talking with the men that you had previously worked?

A. No, not as I had usually done, because it is not the [2163] custom for officers to go aft and mingle with the crew.

Q. Well did you stop talking with them, stop knowing anything about whether they had meetings?

A. I didn't go aft hardly any time to talk with the crew.

Q. Well now did you attend any meetings after these three men left the boat? A. No, sir.

Q. And did you see any notices of meetings after they left the boat? A. Yes, sir.

Q. You did? A. Yes, sir.

(Testimony of Ernest Zihrul.)

Q. Did any of the men tell you after they left the boat that they were still having union meetings?

A. I don't remember.

Q. How many meetings were held during the relief trip you were on as second mate after that?

A. I don't remember. In fact, I don't know.

Q. Do you know that any meeting was held?

A. No, sir.

Mr. Martin: That is all. Thank you.

Trial Examiner Persons: Anything further?

Q. Mr. Zihrul, you made a trip as second mate?

A. Yes, sir.

Q. Navigating officer? [2164]

A. Yes, sir.

Q. What was the degree of error permitted to a good quartermaster in steering a boat?

A. It all depends on the weather conditions. In smooth water a good quartermaster keeps a ship almost on the degree; a degree or two.

Q. That is what you expect?

A. I expect him, in good weather, to keep the ship on the course, within a degree or two. Rough weather, it is different.

Q. That means at all times?

A. At all times, yes, sir.

Trial Examiner Persons: Anything further?

Mr. Martin: That is all.

Mr. Pipkin: No questions.

Trial Examiner Persons: You will be excused, Mr. Zihrul.

Before we call the next witness, may we have an understanding that the noon recess will be at 12:30 to 2:00. Will that be satisfactory?

Mr. Martin: Yes, sir.

Mr. Williams: That is all right with us, Mr. Examiner.

C. B. JOHANNESSEN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [2165]

Direct Examination

Q. (By Mr. Pipkin) Give your name to the reporter.

A. C. B. Johannesen.

Q. Mr. Johannesen, how long have you been going to sea? A. About 35 years.

Q. Have you been ordinary seaman?

A. Yes, sir.

Q. Able-bodied seaman? A. Yes, sir.

Q. Served as quartermaster? A. Yes, sir.

Q. What is your present work?

A. Chief mate on the SS "Washington".

Q. Do you plan to go back on the "Washington" when you get through here? A. Yes, sir.

Q. You got off the "Washington" for the purpose of staying at Port Arthur for this hearing?

A. Yes, sir.

Q. On the "Washington" were you chief mate

(Testimony of C. B. Johannesen.)

during June and July of this year?

A. Yes, sir.

Q. Do you recall a seaman by the name of Buckless, a quartermaster? A. Yes, sir. [2166]

Q. Do you recall two A. B.'s by the name of Rosen and Zinkiewycz? A. Yes, sir.

Q. As chief mate, what are your duties on the ship?

A. To be responsible for the upkeep of the vessel, and to see that the vessel is properly navigated while on watch.

Q. By upkeep of the ship, does that mean you have some men under you? A. Yes.

Q. What is that group of men called?

A. Boatswain and sailors, ordinaries and A. B.'s.

Q. Call them the deck crew?

A. Deck crew, yes.

Q. Now who is directly under you in connection with these men? A. The boatswain.

Q. What does he do?

A. The boatswain, he directs the men to work, as directed from me.

Q. Can he do whatever he wants to do, or does he act solely under your orders?

A. He acts solely under my orders.

Q. Responsible to you? A. Yes, sir.

Q. Reports to you in the regular course of duty? [2167] A. Absolutely.

(Testimony of C. B. Johannesen.)

Q. I wish you would tell the Examiner what type of work Mr. Rosen did? What was he supposed to do?

A. He was able seaman.

Q. Do you recall the time these three men I mentioned came on board?

A. Yes.

Q. Did they come on together?

A. Well, one after the other, say about fifteen minutes apart, or something like that.

Q. Then begin with the coming on board of those three men, and relate what you know about Zinkiewicz and Rosen, please. Take Mr. Rosen first.

A. When he came on board he stayed around amidships there, and all three of them gathered around amidships by the pump room, and stayed there and talked for a while; and finally they went aft. They talked to one of the quartermasters who was on watch when they came on board, and they finally went aft. I don't know what they were talking about. I reckon it was to find out where the crew's quarters were. That is what it should be.

Q. Go ahead and relate what Rosen's duties were, and how he discharged them, and direct your remarks to the Examiner.

A. What his duties were?

Q. What his duties were, and how he did his work. [2168]

A. Well when we first left Port Arthur, at sea we put away all the gear of course, and he was competent in that, and did his work well. About

(Testimony of C. B. Johannesen.)

two or three days out he commenced slacking up, slacking up. When we got on to Florida I had a little job underneath a shelter, to keep him out of the sun, working under there, and he made a little job last a little too long to suit me. I told him about it, that he ought to have been through with this a long time ago, and to get on something else. So he said he would.

Q. Did he?

A. Not that morning. He was lagging in his work all along. When we got up around Cape Hatteras I put him to work on the mast, main mast, which is black, and buff, the lower part of it, say about 20 feet high buff, to paint that. He started in at 8:00 o'clock, and one of the ordinaries was there helping him, Burns. Burns was his name. Well, Burns finished up his side of the mast, where the ladder is, absolutely the worst part of the painting, before 12:00 o'clock; and Rosen, in the boatswain's chair, on the other side of the mast, had about 17 feet to go at 12:00 o'clock. That is four hours work, and an ordinary man should have done that in about two hours.

Q. Was this on the first or second trip you made?

A. This was the first trip.

Q. Do you recall any other way in which he was lacking in his work? [2169]

A. He was lacking all around. I told him about it several times, and asked him if he would not

(Testimony of C. B. Johannesen.)

please help along and do a little work. Munsell and the boatswain and I had to do all the work, and the boatswain complained to me about it.

Q. Did the boatswain in making his report to you report Rosen lagging? A. Yes, sir.

Q. Did it put any more work on anybody else?

A. Yes.

Trial Examiner Persons: May we know who Munsell is?

A. Munsell is an A. B. He is still on the ship.

Q. Was he on watch with Rosen?

A. No. He was then doing day work.

Q. He was a day man? A. Yes, sir.

Q. (By Mr. Pipkin) How long did that attitude and work of his go on, Mr. Johannesen?

A. Well he slackened up more and more all the time. He was slackening up and dragging back for some reason or other. They have 20 minutes coffee time and smoking time. I don't know whether he smoked or not, but he had from 10:00 to 10:20 for coffee time, we call it, on the ship.

Q. And when that 20 minutes was up——

A. Then they turned to again; and besides that he would have his business to go forth and back, and forth and back. [2170]

Q. You mean during the time they were supposed to be working?

A. Yes, sir, during the time he was supposed to be working.

Q. What did you finally do about it?

(Testimony of C. B. Johannesen.)

A. I told him several times that if he didn't do better we would have to get somebody else; and he just laughed at me, and never paid any attention to me.

Q. Did you report it to the master?

A. Yes, sir.

Q. Did the master in your presence ever watch him work?

A. Yes, he watched him.

Q. Well did you decide to keep him or fire him, or what?

A. Well the captain said to me, after I told him I guessed we had better get rid of him and Zinkiewicz both, because they wouldn't do anything, he said: "We will try them another trip. Maybe they will do better next trip." And I said: "All right. It is up to you."

Q. Did you give him a chance?

A. I gave him another chance.

Q. Did he improve?

A. No, none at all.

Q. What was his work like the second trip?

A. He was getting worse all the time; absolutely would do nothing; put him to a job, and he would look around, and wouldn't paint. [2171]

Q. Would he go through the motion?

A. He would go through the motion. He would sit right there in one place. He wouldn't even stand up; sit down.

Q. What sort of work did Zinkiewicz do? How did he do his work?

(Testimony of C. B. Johannesen.)

A. The same way. Both of them lagged around and wouldn't do anything.

Q. Was he a good painter?

A. If he was he didn't prove it aboard that ship.

Q. Do you recall any specific instance when he was painting?

A. I had him painting on the shelter deck overhead, and I watched him, stood there and watched him. He didn't see me, but I saw him. I was hid behind the pump house. And he was hanging up on a steam pipe. Of course there was no steam in the pipe. At sea we don't keep any steam on that steam pipe. He was hanging up on the steam pipe with one arm, and painting with the other; and he stayed in one spot there for two solid hours.

Q. Where was Rosen while that was going on?

A. Rosen was below. That was afternoon, 12:00 to 4:00. Rosen was on 8:00 to 12:00 watch.

Q. Did you report Zinkiewycz's failure to work to the captain? A. Yes.

Q. Did the captain have occasion to notice Zinkiewycz lagging? [2172]

A. Yes. After I reported it he started staying around. He could see that they wouldn't do anything.

Q. Did the boatswain complain to you about Zinkiewycz? A. Yes, sir.

Q. What did you decide to do about him?

A. Well we were going to get somebody else in

(Testimony of C. B. Johannesen.)

their place that would do better, and we decided we would give them another trial; try them one more trip, and if they improved any, all right.

Q. Did Zinkiewicz improve any on the second trip?

A. Never. Neither one of them improved.

Q. When did you and the master decide to let them go?

A. On the way back the second trip.

Q. From where? A. From Claymont.

Q. After you left Claymont on the way back?

A. From Claymont. I don't exactly remember whether it was the day before we got into New Orleans or not. We went to New Orleans that trip, or Amesville, Louisiana.

Q. Was it before you got to Amesville?

A. No, it was after we got to Amesville, I think. I don't remember that exactly.

Q. You decided to let them go when you got back to the port of discharge?

A. Yes, sir. [2173]

Q. Did you have occasion to observe Mr. Buckless?

A. No, only in port, when he was on the afternoon watch.

Q. Do you recall when you got to Claymont, Delaware? A. Yes, sir.

Q. Your watch was from 8:00 to 12:00?

A. Mine?

Q. Yes.

(Testimony of C. B. Johannesen.)

A. No, I had daytime in port.

Q. Do you know anything about Mr. Buckless' conduct in the Port of Claymont, Delaware?

A. Yes. We came in there Sunday morning, July 3, and docked around about 3:00 o'clock in the morning. And during the afternoon watch Sunday we discharged cargo. The ship was getting up, not only from discharging cargo, but also from the incoming tide, and I told him to go up there and slack away on the lines. And of course thinking that the man would do his duty and look out for it without being told, I looked around again at the lines after a while, and the lines were tighter than a fiddle string. And I went up there myself and turned them loose, and I asked him: "What the devil is the matter with you? Can't you attend to your work around here?" So he said he was going to do it. I said: "You were going to do it, but you didn't do it." I smelled liquor on him then. I don't know where he got the bottle from. I guess he had been ashore in the morning. So I said: [2174] "All right, you go ahead and attend to these lines, and watch this hose, and turn these valves according to where the pumpman tells you to." But he never paid any mind. He just laid around and laid around. [2175]

Q. Did you see him that night?

A. Yes, that night he came on board. I took the third mate's watch for him. He wanted to go up and see some people.

(Testimony of C. B. Johannesen.)

Q. Who took the third mate's watch?

A. I did.

Q. What time was that?

A. That was from 4:00 o'clock that afternoon to 12:00 o'clock that night, of July 4.

Q. An eight hour watch?

A. Yes. He was on board in the evening, but he had to go up there and see some kin people that were sick. So I said: "All right, go ahead. I will stand your watch." And a quarter to 12:00 Buckless came on board, and in place of going back there and changing his clothes and coming on back, he went and turned in.

Q. What time did you go off duty?

A. The second mate came to relieve me about five minutes to 12:00, something like that.

Q. Did you see him coming aboard?

A. Yes, sir, I saw him coming aboard. He was staggering all over the walk down there.

Q. You mean Buckless? A. Buckless, yes.

Q. Did he seem to have any difficulty getting aboard?

A. The ship was half way unloaded, and the gangway was a [2176] little steep, and he had about all he could do to get on board.

Q. Did you talk to him that night?

A. No.

Q. Did you talk to him the next morning?

A. No, sir.

Q. Did you talk to him when you sailed?

(Testimony of C. B. Johannesen.)

A. No. I saw him coming out there. I never talked to him. His duty is aft with the second mate.

Q. Did you ever see him at any other time on these two voyages when he had been drinking?

A. Yes, sir, in Bayonne, and New Orleans, or Amesville rather.

Q. Did he miss any watches other than the one at Claymont?

A. No, he didn't miss any watches, but Sunday he was not doing anything but lying around. He might as well not have been there, because he was no help to me.

Q. This was Sunday when?

A. In Claymont.

Q. In Claymont? A. Yes.

Q. Do you know anything about his steering ability?

A. No, I couldn't say anything about his steering ability. Of course, he was not on my watch at sea.

Q. Mr. Johannesen, relate how, when and where these men were [2177] given their money and discharges when you got back to Port Arthur.

A. It was July 14, I think, we arrived here and paid off, at the end of the second voyage. They were paid up to July 13 on the payroll, and the captain gave me their discharges for these three, Zinkiewicz and Rosen and Buckless, and one day's pay, with the voucher. There was also a wiper that was supposed to be paid off at the same time, and I

(Testimony of C. B. Johannesen.)

got his money and voucher and discharge; to pay these four men off after they had done their day's work, eight hours.

Q. Well, did you pay them off?

A. When they had done their eight hours I paid them off. No, excuse me, I made a mistake there. Buckless kept on pestering me the whole afternoon on his watch, 12:00 to 4:00, if he was fired. I said: "You want to put in a day, don't you."

He said: "Well, I don't care about the day. I want to know if I am fired."

Well, the voucher was made out, and a day's pay, and so I wanted to keep him there until 4:00 o'clock, until his time was up. But he pestered me and pestered me if he was fired.

And I said: "I will let you know in time."

Eventually I got sick and tired of him, and I said, at 3:00 o'clock: "Come on. I will give you your money. You want to go off so bad you can have it right now. I can get [2178] along without you."

Q. Had Zinkiewicz done gone?

A. Zinkiewicz had done gone. He had put in his day.

Q. Had Rosen gone?

A. No, Rosen was working until 4:00 o'clock.

Q. Did he work until 4:00?

A. He was to work on until 4:00.

(Testimony of C. B. Johannesen.)

Q. Did these men say anything to you when they left?

A. No. Well, Rosen asked me why he was fired. So I said: "You have had plenty of warning why you were fired."

Q. Did Buckless make arrangements with you for somebody else to stand his watch at Claymont, Delaware?

A. No, sir.

Q. Did he ask your permission?

A. No.

Q. Whose responsibility is it to set those watches?

A. Mine.

Q. Yours?

A. Yes, sir.

Q. If there had been any changes made in them what mate should authorize it?

A. The chief mate.

Q. Did you authorize this change?

A. No.

Q. Were you requested, any request made of you, to permit [2179] it?

A. No, there was no request made. He never asked me if he could stay off.

Mr. Pipkin: Will you indulge us just a minute, Mr. Examiner?

Trial Examiner Persons: Yes, surely, Mr. Pipkin.

Q. (By Mr. Pipkin) Do you recall the occasion when Mr. Rosen asked the captain to make certain repairs to screens, buckets and so forth?

A. Yes. The captain told me to see that it was fixed. That is all I know.

Q. What voyage was that?

(Testimony of C. B. Johannesen.)

A. The first voyage.

Q. First voyage? A. Yes, sir.

Q. And after that you made a subsequent voyage? A. Yes, sir.

Q. Mr. Rosen and Mr. Buckless were on that second voyage? A. Yes, sir.

Q. Was there any difference in your treatment of union and non-union men?

A. None whatsoever.

Q. Did it make any difference to you whether a man was union or not?

A. No. So long as the man performed his duty, it was all [2180] right with me.

Q. Have you ever discharged or recommended a man to be discharged because he was a union man?

A. No, sir.

Q. A man coming aboard ship, did you ever ask him if he was a union man or not? A. No.

Q. Have you ever recommended a man be fired because he was a delegate? A. No. [2181]

Q. Have you ever fired a man because he was a delegate? A. No, sir.

Q. Was a man on the "Washington" ever fired because he was a delegate, as far as you know?

A. Not as long as I have been there.

Q. Did Rosen perform any special jobs for you while he was on the ship?

A. No, only the regular routine.

Q. Was his work——

(Testimony of C. B. Johannesen.)

A. Painting, scaling, washing paint, and so forth.

Q. Was his work the same as any other A. B.'s should have been? A. Yes.

Q. What is the custom on the ship, on the "Washington", with reference to men missing watches, what arrangement did they make?

A. They come and ask me if they can stay off watch if another man will take their place.

Q. Is that the general understanding?

A. That is the general rule on all ships, not only on the "Washington".

Q. Were working rules posted on the "Washington"? A. Yes, sir.

Q. During this time, June and July, 1938?

A. Yes, sir.

Mr. Pipkin: That is all. [2182]

Cross Examination

Q. (By Mr. Martin) Mr. Johannesen, how did you get the men to replace these three who were fired on the 14th of July? A. Sir?

Q. How did you get the men to replace these three who were fired on the 14th of July?

A. How I got them?

Q. Yes.

A. As a general rule, I send word to Mr. Meyers, the man who hires the men for the company ships, and he goes down to the wharf, or goes—I don't

(Testimony of C. B. Johannesen.)

know where he goes—and gets the men, and they report on the ship to me, or go aft.

Q. Now, in this particular case, when did you do that?

A. When we arrived here in Port Arthur.

Q. And then you fired those three men that day here, that was the 14th? A. On the 14th.

Q. Now, when did you get these other men?

A. I sent for them on the same day, to turn to on the 15th.

Q. Did you go down and see Mr. Meyers?

A. Mr. Meyers came on the ship.

Q. I see. On the very day you said you wanted three men? A. Three men.

Q. Two A. B.'s and a quartermaster?

A. Yes, sir. [2183]

Q. What time was it that day that Mr. Meyers came on?

A. Well, now, I couldn't tell you; on the arrival, whenever we arrived, he came on board that minute, as soon as the gangway was out he came aboard.

Q. And then when did the new men come down to see you? When did you first see any of them?

A. They were there the next morning. That is all I know.

Q. When did the boat sail?

A. I believe it was on the 16th.

Q. That the boat sailed? A. Yes, sir.

Q. And the men reported to you on the morning of the 15th? A. On the 15th, yes, sir.

(Testimony of C. B. Johannesen.)

Q. And they worked on that day, did they?

A. Yes, sir.

Q. Did you accept the first three men Mr. Meyers sent down to you that day? A. Yes, sir.

Q. They were satisfactory to you?

A. They were satisfactory as far as I knew at that time.

Q. Well, that is what I am interested in.

A. It is not customary when the company sends me a man for me to send them back again. I must give that man a trial.

Q. I see. You could have rejected those men, or any one of them, if you wanted to, couldn't you?

[2184]

A. Absolutely. But it is not the company's rules to do that. You must give a man a chance to find out his ability, and to obey the company's rules.

Q. Well, but you have the authority to refuse a man Mr. Meyers sends you? A. Absolutely.

Q. You don't have to take him?

A. If I know a man is incompetent, I don't have to take him.

Q. These men worked for you all one day on land? A. Yes.

Q. Before the boat left? A. Yes, sir.

Q. And you did not decide that you should refuse to let any of them go on the boat, did you?

A. No.

Q. And you did let them go when the boat sailed on the 16th, that is correct? A. Correct.

(Testimony of C. B. Johannesen.)

Q. Now, when were the shipping articles for the new trip signed? A. On the 15th.

Q. The 15th? A. Of July, yes, sir.

Q. What time of day?

A. I believe it was after dinner. [2185]

Q. That night?

A. No, after dinner, between 12:00 and 4:00 o'clock in the afternoon. I remember that it was afternoon.

Q. The day before the boat set sail?

A. Yes, sir.

Q. On the new trip? A. Yes, sir.

Q. That was some hours after these new men reported to you?

A. Yes, sir. Let me see. I believe I am tangled up there. Do you mind my looking at this here?

Trial Examiner Persons: Is it in your own handwriting? A. Yes, sir.

Q. Trial Examiner Persons: I take it there will be no objection. You made this out yourself?

A. Yes, sir. I copied it from the log. I want to be sure I am right on these dates.

Trial Examiner Persons: I think that is desirable.

Mr. Martin: I do also.

Q. If, from your notes, you wish to change any of the dates, I wish you would do so.

A. We arrived in Port Arthur at 8:08 a. m., July 14th.

(Testimony of C. B. Johannesen.)

Q. Yes, sir. A. And we sailed on the 16th.

Q. What time?

A. 5:45, I think. I haven't got that down. [2186]

Trial Examiner Persons: It was in the afternoon? A. Yes.

Q. Not in the morning?

A. No. So we signed articles on the 15th, in the afternoon.

Q. (By Mr. Martin) You are sure it was not the afternoon of the 16th?

A. No. The 16th we sailed, on the morning of the 16th, for I came down and had to come on board. I live in Beaumont, and I had to come aboard that night. I stayed aboard the ship that night to be there the first thing in the morning.

Q. Now, by virtue of what authority did you tell Mr. Meyers when the boat docked at 8:00 a. m., on July 14th, that you wanted three new men for the next trip? A. I didn't understand you.

Mr. Martin: Well, read the question.

(Question read.)

A. What authority. I don't get that.

Q. (By Trial Examiner Persons) Did the captain give you orders to get three men from Mr. Meyers?

A. No, he already told me to get three men. I knew there must be three men to replace the men going off the ship. Everybody knows that.

Q. So the captain didn't have to tell you to get three men? A. No.

(Testimony of C. B. Johannesen.)

Q. You just did it on your own accord?

A. That is my duty to see that the full complement of the crew is there for [2187] sailing. That is the chief mate's duty. The captain has got something to do with it all right. He is the big boss, of course. We know that.

Q. Yes.

A. But he leaves that to the mate.

Trial Examiner Persons: I gather that the captain's duty is to see that the chief mate is competent?

A. Competent enough to attend to his own work.

Q. That is what happened in this case?

A. Yes.

Q. (By Mr. Martin) He did not specifically tell you to get three new men?

A. No. It is not customary.

Q. He just assumed you would get them.

A. He knows that I will get them. He doesn't assume it. He knows it. If I didn't know that much, I wouldn't be there.

Q. Now, the next morning when these men reported to you, did you ask them to report to the captain before they went to work?

A. No. They reported to the captain to sign articles on the 15th.

Q. But they worked all morning of the 14th?

A. Oh no. The 14th we arrived.

Q. I am sorry. They worked during the morning of the 15th before they talked to the captain?

(Testimony of C. B. Johannesen.)

A. Yes, they turned to at 8:00 o'clock. [2188]

Q. Under your orders and direction?

A. From me to the boatswain, and they worked under the boatswain's directions, whatever he directed them to do, under my supervision.

Q. Yes. How did you know you were going to make the next trip?

A. I knew that if I didn't, the master would have told me I couldn't make the next trip.

Q. And he had not told you that?

A. He had not told me.

Q. Is your name at the top of the shipping articles for each trip you made? A. No. 1.

Q. Yours is the top name? A. Yes, sir.

Q. Now, isn't it true, Mr. Mate, that Zinkiewicz, Rosen and Buckless would have had to work until 5:00 p. m., on the 14th if you had asked them to?

A. No. We would have had to pay overtime if they worked until 5:00 p. m.

Q. But under their contract with you, or with the captain, you could have made them stay until 5:00?

A. No, sir, not that day. At 4:00 o'clock their eight hours was up.

Q. Mr. Mate, I show you the first page of what has been [2189] received in evidence as Respondent's Exhibit 11, and refer you to Item No. 8 of the contract between the captain and the crew. Does that not say that the crew is to work on day of

(Testimony of C. B. Johannesen.)

arrival in final port of discharge until 5:00 o'clock p. m., if required?

A. Yes, but you can't work them over eight hours. The men on the 12:00 to 4:00 watch, they had four hours in the morning, and from 12:00 to 4:00 in the afternoon, and that is eight hours, and that constitutes a days work.

Q. But if you had demanded that these men stay until 5:00 o'clock, they would have had to stay?

A. Not those men, no. They had done their eight hours work.

Q. But I am not talking about whether you would have to pay them overtime. The point is, if you had wanted them to stay, and pay them overtime, they would have had to stay?

A. Under their agreement, they are supposed to work eight hours, and the eight hours is up. They are finished.

Q. Irrespective of pay, forget that one minute, if you or the captain had wanted them to work until 5:00 p. m., that day, under their contract or agreement with the captain at the beginning of the trip, you could have required them to work until 5:00, couldn't you?

A. No, sir, not after the man has done his eight hours work. When his eight hours is up he is finished for that day. You can't make him work over eight hours. [2190]

Mr. Williams: Mr. Examiner, we object to this line of questioning. The contract speaks for itself.

(Testimony of C. B. Johannesen.)

If it is susceptible of some other construction, well and good. I think that is the Board's province to construe the contract.

Trial Examiner Persons: I will agree that the witness has made clear his understanding of that provision.

Mr. Williams: It is pure speculation of what he might or could have done.

Q. (By Mr. Martin) Were the three men who replaced Rosen, Zinkiewycz and Buckless, union men?

A. I couldn't tell you. I heard they were union men, yes, but I don't know. They never showed me any credentials.

Q. Who told you they were union men?

A. Well, they told me themselves that they were union men. They came up there to the captain, and they were delegates, and so forth and so on.

Trial Examiner Persons: I think there is a misunderstanding.

Q. (By Mr. Martin) The question is as to those three new men, after Zinkiewycz and Rosen and Buckless left.

A. I was told they were union men.

Trial Examiner Persons: Then who told you?

A. I don't know who it was who told me. That went all over the ship. The ship is supposed to be 100 per cent union men, [2191] according to statistics of the crew.

Q. Who told you that?

(Testimony of C. B. Johannesen.)

A. Well, the steward was one of them that told me. He is a union man. He lives up amidship there.

Q. Did anybody else tell you while Rosen, Zinkiewicz and Buckless were aboard that the crew was 100 per cent union?

A. And after they left the boat.

Q. Who told you that while they were aboard?

A. The steward was one of them. I don't recollect, I can't name anyone.

Q. Did you see notices from time to time that union meetings were to be held?

A. I never saw them being held no, but I have heard of them being held, yes, sir.

Q. (By Trial Examiner Persons) Did you see the notices?

A. Yes, I saw one there that said, I think, an open air meeting, 6:00 p. m.

Q. Anything about a union? A. No.

Q. Union meeting?

A. They had it hung out by the galley door one day, and I went back there and saw it, open air meeting, 6:00 p. m.

Q. Did it say who was holding the meeting?

A. No, it didn't say that.

Q. It might have been just a crew meeting?

[2192]

A. Yes, sure.

Q. Didn't say union meeting?

A. No, just said open air meeting at 6:00 p. m.

Q. And, Mr. Mate, were you present at that dis-

(Testimony of C. B. Johannesen.)

cussion with the captain and the delegates when they were objecting to Buckless going over the side to paint?

A. I never knew that Buckless had any instructions to go over the side to paint.

Q. Then you were not present at that meeting with the captain?

A. There was nobody instructed to go over the side to paint.

Q. That was not the question. Read the question.

(Question read.)

A. No.

Q. What were you doing during the two solid hours that Zinkiewycz was lagging at the same spot?

A. I was watching him.

Q. For two solid hours?

A. For two solid hours, yes.

Q. You didn't have anything to do except to watch him?

A. I just stood there and watched, the same as I am watching you right now.

Q. You mean you were earnest? A. Yes, sir.

Q. And you were laying for him? [2193]

A. Yes, I was laying for him.

Q. And you got him?

A. You damn right, I got him.

Q. Yes, sir. A. Excuse me.

Q. That is all right.

A. And I got him told, too, and plenty.

(Testimony of C. B. Johannesen.)

Q. Now, what time of day was that?

A. Well, let's see. I can give it to you exactly on the minute. Let's see: From a little after 1:00 to 3:00 o'clock, when he went back for coffee; from 1:00 in the afternoon until 3:00 o'clock when they went back to coffee, he stayed there in that same spot. He hung there with his arm over a steam pipe.

Q. Where were you standing?

A. Standing by the pump house. He was under shelter deck and he was painting up underneath the roof there, or supposed to be painting, and he had a bench underneath, and he had a pipe there, and it must have been a very comfortable place there, because he never shifted from there for two solid hours.

Q. Were you standing in the sun?

A. No, sir, the shade. [2194]

Q. You were in the shade? A. Yes, sir.

Q. A hot afternoon, was it?

A. The coolest place on the ship. The breeze comes right through the shelter deck there. It is open under there.

Q. Since he was painting, I assume it was not raining, but a clear, bright day?

A. Fine weather.

Q. Now, why were you laying for Zinkiewicz?

A. To see if I couldn't make him do better.

Q. During this entire period of two hours, did you go up to him?

(Testimony of C. B. Johannesen.)

A. No. I just watched to see how far he would go in those two hours.

Q. Then, how did your efforts at that time contribute to his doing any better if you didn't speak to him about it?

A. I spoke to him. When three o'clock came I spoke to him, when he went back for coffee.

Q. But despite the fact that he was loafing for two hours, he was fired for incompetency.

A. Neglect.

Q. On the crew's list it said incompetency.

A. Incompetency and neglect both. You can use both words for that.

Q. Wasn't there plenty of space on the crew's list that [2195] you sent to New York, to put that in?

A. I never put anything on the crews list. I have nothing to do with that.

Q. Did you fire Zinkiewicz?

A. I recommended him to be fired. The Master fired him, of course, and I paid him off.

Q. Do you feel it any part of your obligation to see that the reason or reasons why you fire a man are directly reflected in the crews list that is sent to New York?

A. I suppose that is the company's rules. I don't know.

Mr. Pipkin: I think he didn't understand the question. Will you read it, Mr. Etter?

(Question read.)

(Testimony of C. B. Johannesen.)

A. No.

Q. (By Mr. Martin) It is not a part of your duty? A. No.

Q. Would you say then, that as a matter of fact, the reasons given in the crews list for firing any specific individual do not always reflect the reason, or all of the reasons, why he was fired?

A. I presume not.

Mr. Pipkin: Did you understand that question?

Mr. Martin: Yes. I could tell by his inflection he did.

Mr. Williams: I don't know that I understand it myself.

Trial Examiner Persons: Would you like it read? [2196]

Mr. Williams: Yes, sir.

Trial Examiner Persons: Read the question, Mr. Etter.

(Question read.)

Mr. Williams: It really called for a conclusion, anyhow.

Trial Examiner Persons: Will you read the question again? And read it a little more slowly, Mr. Etter. You are a little fast.

Mr. Williams: Do you understand that question?

A. I didn't get all the details of it, no. I don't understand it.

Mr. Pipkin: Will you ask it, Mr. Examiner?

Q. (By Trial Examiner Persons) The question

(Testimony of C. B. Johannesen.)

is, do the notations on the crew list which record discharges cover the reason and all the reason why a man is discharged?

A. I don't know about that.

Q. That is the Captain's job?

A. That is the Captain's job.

Q. Do you see those crew lists with discharges noted? A. No, sir.

Q. Not in line of duty at least? A. No, sir.

Trial Examiner Persons: Are you satisfied?

Mr. Williams: We are satisfied. I thought he didn't understand it.

Mr. Pipkin: Thank you, sir. [2197]

Q. (By Mr. Martin) How long did the first trip, first voyage, last when Rosen was on?

A. The complete voyage from Port Arthur and back again?

Q. Yes.

A. I will tell you right here. From June third to June twentieth.

Q. Would that be seventeen days?

A. To Amesville, June 20. On the twenty-second in Port Arthur. We went to Amesville and unloaded, to come to Port Arthur the twenty-second.

Q. Then, is it correct that you had sixteen days during the first voyage to observe Rosen's work after he first began to slacken, two or three days out of Port Arthur, the first trip? A. Yes, sir.

Q. During those sixteen days did you have am-

(Testimony of C. B. Johannesen.)

ple opportunity to observe whether or not he was improving, as you continually cautioned him?

A. He was not improving.

Q. Did you have an opportunity to observe him?

A. Yes, sir.

Q. And is it your testimony that he did not improve, despite your continued warnings during those sixteen days?

A. Yes, sir.

Trial Examiner Persons: You will have to speak. Mr. [2198] Etter can't see your nod.

Q. (By Mr. Martin) How many times did you warn him concerning anything he did during those sixteen days?

A. That is pretty hard to tell. I couldn't remember that.

Q. Would you say a number of times?

A. A number of times would be all right.

Q. Half a dozen?

A. Or a dozen.

Q. During that period of sixteen days did you see anything that led you to believe that he intended to improve?

A. His intention must not have been to improve.

Q. His intention must not have been to improve?

A. Must not have been to improve himself.

Q. And you noticed that, did you?

A. Yes, sir.

Q. During those sixteen days?

A. Yes, sir.

Q. Then, why did you give him another chance?

A. I consulted with the Master, and the Master

(Testimony of C. B. Johannesen.)

told me: "Try him one more trip, and if he don't improve, let him go when we get back again, and we won't sign him on again."

Q. Did you tell the Master you didn't think he would improve? Did you tell the Master that?

A. Yes. I told him I didn't think there was any improving in him. He was too lazy, in other words. [2199]

Q. Does the Master usually follow your recommendations with respect to the deck crew?

A. He uses his own judgment, of course. He wanted to find out for himself that he was correct in firing anybody. After I started to complain to the Master, he started watching him himself.

Q. Then, the Master didn't start watching Rosen until the second voyage, is that correct?

A. I believe that is when he started watching him. He told me one day: "There is no improvement in these fellows. They will never do any good on this ship. The best thing we can do is to get rid of them and not sign them on again."

Q. When did he say that?

A. On the second voyage.

Q. Did the Captain ever give you any indication during the first voyage that he thought Rosen was lazy?

A. I don't remember.

Q. No?

A. I don't remember.

(Testimony of C. B. Johannesen.)

Q. Well, now, at the end of the first voyage, you actually went so far as to tell Zinkiewycz that he was fired? A. Yes.

Q. Did you consult the Captain about that?

A. Yes, sir.

Mr. Williams: Do you mean the first voyage?
[2200]

Trial Examiner Persons: Do you mean the first voyage? A. First voyage, yes, sir.

Q. (By Mr. Martin) Did you talk to the Captain about that? A. Yes, sir.

Q. What did the Captain say?

A. I really did fire him.

Q. Did you talk with the Captain?

A. Yes, I'd talked to the Captain before.

Q. Did the Captain tell you why it would be all right with him to fire Zinkiewycz, and why he didn't want you to fire Rosen?

A. Well, Rosen was doing a little better than Zinkiewycz. He didn't stay in one place for two hours and paint. He painted fifty feet in four hours. He did a little better than the other fellow. That is not a whole lot better though.

Q. What was Rosen doing? Was he painting a huge sign to hang out at Amesville?

A. I couldn't tell you.

Q. Did you see that sign?

A. Yes, I saw it.

Q. You did see it?

A. In fact, I tore it down.

(Testimony of C. B. Johannesen.)

Q. Where?

A. Under the instructions of Mr. Hand I tore it down; tore it down and threw it overboard; and they picked it up again [2201] the second time.

Q. Who did that?

A. I didn't see who it was. But I call that child's play. A little child would do that, that goes to school. I don't call that man's play.

Q. Did you talk to the Captain about that sign?

A. No, I didn't talk to the Captain about it. In fact, I didn't see it was up there. I have no business back there. They must have hung it up before we docked.

Q. Did the Captain ever make any reference to that sign to you?

A. No. Mr. Hand came there and told me to tear that sign down.

Q. Mr. Hand also told you to keep Zinkiewicz on another trip, didn't he?

A. Yes, sir. Mr. Zinkiewicz promised me that he would do lots better, that he would improve. In place of that, he improved the other way.

Q. Did Mr. Hand tell you to keep Zinkiewicz on the other trip the same time he told you to take the sign down?

A. No. That was the following trip, the last trip.

Q. When did you first see this big sign?

(Testimony of C. B. Johannesen.)

A. Well, I saw something hanging back there going out of New Orleans, going down the Mississippi River, but I never paid any attention to it.

[2202]

Q. That was coming back on the second trip, wasn't it?

A. On the second trip, yes. But I never paid any attention. I never paid any attention to it coming into Port Arthur even.

Q. Except to tear it down?

A. Except to tear it down. I was surprised when Mr. Hand said to tear that sign down. I didn't know what he was talking about.

Q. Was this on July fourteenth that he tore the sign down? A. Yes, sir.

Q. What time of day was it?

A. Well, we docked in the morning around eight o'clock. Mr. Hand came on board just after we docked. I will say nine o'clock he came aboard.

Q. And that is when he told you to tear it down?

A. Yes, sir.

Q. About nine o'clock? A. Yes, sir.

Trial Examiner Persons: Have you a stopping place?

Mr. Martin: May I have just a minute?

Trial Examiner Persons: During the interim you will not talk about the case unless it be with the company's attorneys?

A. I will not talk about it to anyone.

Trial Examiner Persons: That will be better.

(Testimony of C. B. Johannesen.)

Mr. Pipkin: To whom should he talk? [2203]

Trial Examiner Persons: To no one except the respondent's attorneys. It is just the regular instructions we give any witness during the noon interim, not to talk about the case except with the appropriate attorney.

Mr. Williams: Do I understand that the respondents are excluded?

Trial Examiner Persons: That is what I said, now, with the respondent's attorney.

Mr. Pipkin: I suggest, in view of that statement in the record, that we continue until we conclude with Mr. Johannesen.

Trial Examiner Persons: He is not cut off from you.

Mr. Pipkin: I don't want to talk to him.

(Discussion off the record.)

Mr. Pipkin: Let the record show that the respondent's attorney misunderstood the Examiner's instructions.

Trial Examiner Persons: Are you ready for adjournment?

Mr. Martin: Yes, I am ready.

Trial Examiner Persons: Adjournment at this time until 2 p. m.

(Thereupon, a recess was taken until 2 o'clock p. m.) [2204]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock p.m.)

(Testimony of C. B. Johannesen.)

Trial Examiner Persons: Will you be sure to note that Mr. Mullinax has an appearance. He is taking over when Mr. Mandell goes away.

Mr. Johannesen, will you resume the stand?

C. B. JOHANNESSEN

resumed the stand on behalf of the respondent and testified further as follows:

Trial Examiner Persons: Gentlemen, we will note that we have a new reporter; at least a relief reporter, Mr. Conklin, who takes over for Mr. Etter.

Proceed with your cross examination, Mr. Martin.

Cross Examination

(Continued)

Q. (By Mr. Martin) Mr. Johannesen, do you have a written contract with The Texas Company marine division? A. No, sir.

Q. Then the only working contract you ever have with the company is when you sign the shipping articles, is that correct?

A. The articles from voyage to voyage.

Q. Did you consider firing Buckless at any time during the first trip? A. Yes, sir. [2205]

Q. What gave rise to that consideration in your mind?

A. His neglect; hard-headedness when I give him an order to do something. He always gave a little snotty answer or something to that effect.

(Testimony of C. B. Johannesen.)

Q. How do you remember any instances in particular?

A. The same as I said before. On slacking away or taking up on lines when loading or discharging, opening up valves, whatever was necessary to be done around the deck when he was on duty, he would kind of linger around and would give a little answer that was unnecessary.

Q. Now why did you fire Buckless?

A. The captain fired him.

Q. The captain paid him off, you mean?

A. By recommendation of me and the second mate. The second mate complained to me about him being drunk and wouldn't stand his watch and he also complained to the captain.

Q. But you are the one who told him that he was fired, isn't that correct?

A. I told him that afternoon when I paid him off; give him the slip, the voucher, and the discharge, that he was no longer required.

Q. Now why did you fire him? A. Sir?

Q. Why did you fire him?

A. Well, I just told him that he was fired. I already had [2206] the voucher and his discharge and the money for that day's work. That wasn't on the regular payroll.

Q. But I want to know the reason why you fired him?

A. The reason? By instructions of the master. The master's instructions.

(Testimony of C. B. Johannesen.)

Q. Had you reported to the master at any time that Buckless gave you back smart answers?

A. Yes.

Q. You had? A. Several times, yes.

Q. Was that one of the reasons why you fired him?

A. That is one of the reasons, of course, that he was fired, and neglect of his duty.

Q. Neglect of duty and making smart answers?

A. Yes.

Q. And what other reasons?

A. Well, there was several others. His steering and his drunkenness.

Q. Now did you consider it a part of your duty to see that all the reasons why he was fired were put down on the crew's list that was sent to the New York offices of The Texas Company?

A. No, sir.

Q. So far as you know then there were other reasons why he was fired than those that were reflected in the crew's list [2207] that went to New York City?

A. I don't know what was on the crew list.

Q. You don't? A. No.

Mr. Martin: That is all I have at this time.

Trial Examiner Persons: Questions by the union?

Mr. Mullinax: No questions.

Trial Examiner Persons: Mr. Johannesen, would you mind explaining for the record—it may be clear, but it is not clear to me—something you said

(Testimony of C. B. Johannesen.)

about Mr. Zinkiewicz. Was he fired after the first voyage; that is, discharged?

A. Yes, he was fired, but he begged to come back again to make another trip; that he would do better, so the captain decided to let him make another trip.

Trial Examiner Persons: The captain told you before?

A. Yes.

Trial Examiner Persons: You and the captain discussed it?

A. Yes, sir.

Trial Examiner Persons: And the captain said to let him have another trial?

A. Give him another chance, yes.

Trial Examiner Persons: And after the second voyage he was discharged again?

A. Yes. He didn't improve any, so we had to let him go. [2208]

Trial Examiner Persons: But that is correct, that he was discharged twice, once after each voyage?

A. Yes, sir.

Trial Examiner Persons: You set the watches as first mate?

A. Absolutely, yes.

Trial Examiner Persons: In setting the watches is there any established custom as to who rates each watch?

A. No.

(Testimony of C. B. Johannesen.)

Trial Examiner Persons: Do you reckon the watches are of equal desirability or is there one that is counted the worse of the three?

A. Well, the 12:00 to 4:00 watch is really counted the worse watch.

Trial Examiner Persons: Because of those morning hours?

A. The morning hours, yes.

Trial Examiner Persons: Is there any objection to the 4:00 to 8:00 watch?

A. No.

Trial Examiner Persons: On the score that you split your working hours in two?

A. No. The 8:00 to 12:00 is really the best watch on the ship.

Trial Examiner Persons: That is the first mate's watch, I take it? [2209]

A. That is the third mate's watch.

Trial Examiner Persons: Which is your watch?

A. The 4:00 to 8:00. I go on at 4:00 in the morning and 4:00 in the evening.

Trial Examiner Persons: The rules say that the work of the ship other than navigation and so on is restricted from 6:00 to 6:00?

A. Yes, sir.

Trial Examiner Persons: So that the 4:00 to 8:00 watches catch their work in two doses?

A. Yes, sir, in the morning from 6:00 to 8:00 and from 5:00 to 6:00.

Trial Examiner Persons: From 4:00 to 6:00, you mean?

(Testimony of C. B. Johannesen.)

A. From 4:00 to 6:00 and then they get a half hour for supper.

Trial Examiner Persons: But if they are on painting or some other duty, disagreeable work, they have to change clothes a couple of times?

A. Yes, sir.

Trial Examiner Persons: Do they object to that?

A. No, sir.

Trial Examiner Persons: Do you ordinarily give the older men in service the watch that is rated best and most desirable?

A. If they ask for it, I try to let them have the best watch, [2210] what they call the third mate's watch or the mate's watch, but some of them would rather have the 12:00 to 4:00 watch for some reason or other.

I don't know why, but I have had them come to me and ask me to put them on the 12:00 to 4:00 watch; to let them have the 12:00 to 4:00 watch. We have one quartermaster on board that was on my watch for about four months and he asked me if he couldn't transfer to the 12:00 to 4:00 watch when there was an opening.

Trial Examiner Persons: Do you regularly do that; that is, consulting their wishes when you can, other things being equal?

A. Yes, sir, that is, try to be agreeable with them, of course.

(Testimony of C. B. Johannesen.)

Trial Examiner Persons: After a watch is set for a voyage, in case it becomes necessary to change; say a man drops out for sickness; and you look the list over and you say to so and so "I want you to take a certain A.B.'s place on the watch," can he refuse?

A. No. If he is on the 12:00 to 4:00 watch and I told him "You go on the 4:00 to 8:00 watch," well, he has got to do it. It is his duty to do it.

Trial Examiner Persons: He can't say "no"? He can't say: "No, I prefer the watch I am on"?

A. No. [2211]

Trial Examiner Persons: He can't say: "If I make that change I will loose a couple of hours' time"?

A. No. You don't lose no time, of course.

Trial Examiner Persons: Even if he would, he couldn't refuse it?

A. No, he couldn't refuse it.

Trial Examiner Persons: In the case of overtime, I have been reading the rules about overtime pay, and in case the men are directed or ordered to work overtime at the end of their regular watch, could they refuse?

A. No, I don't think they can. They get compensated for it and they are always glad to work overtime.

Trial Examiner Persons: I don't recollect—perhaps you do—anything in the working agreement, the articles, or the working rules that are posted

(Testimony of C. B. Johannesen.)

whether or not a man is required to work overtime.
Is there anything?

A. No.

Trial Examiner Persons: It just goes by custom and, I guess, the rules of the sea?

A. The company's rules that they have back there in the mess room say that after 6:00 p. m. and before 6:00 p. m. or on your watch below if you work overtime you will be paid for it.

Trial Examiner Persons: This work of cleaning tanks, it is disagreeable? [2212]

A. Yes, sir.

Trial Examiner Persons: Is it in any degree dangerous?

A. No. The tanks are steamed out and washed out before anybody goes down there and seen to it that they are absolutely gas free.

Trial Examiner Persons: No fumes?

A. No fumes.

Trial Examiner Persons: Or dangerous fumes?

A. No, they are absolutely gas free before anybody enters the tanks.

Trial Examiner Persons: But the extra pay, and the extra pay even though it isn't your watch, is recognition of the disagreeable character of the work?

A. Disagreeable; getting dirty and so on.

Trial Examiner Persons: Is it hard work; harder than normal?

(Testimony of C. B. Johannesen.)

A. No, it ain't very hard. All they have to do is go down there and sweep up that dirt down there and put it in buckets. Of course I will admit that they get pretty dirty at times, especially on a ship like we are in, carrying black oil.

Trial Examiner Persons: I was going to say, if you carry crude oil they would get pretty dirty.

A. Crude oil and fuel oil, you get pretty dirty.

Trial Examiner Persons: There would be a good deal of sludge in the tank, wouldn't there? [2213]

A. Yes.

Trial Examiner Persons: At the time that Zinkiewicz was fired at the end of the first voyage, did anybody at that time for any reason mention a union?

A. Not that I know of, no.

Trial Examiner Persons: At the time these three men, Zinkiewicz, Rosen and Buckless were discharged at the end of the second voyage, will you search your memory and see if you can think of any mention made by anybody about unions in any connection?

A. I can't recollect. I didn't pay attention. If they did, well, it is not to my knowledge.

Trial Examiner Persons: You have no such memory?

A. No. I am pretty sure no one mentioned it that I heard it. They might have said it elsewhere.

Trial Examiner Persons: No. I am only asking you about your own knowledge.

(Testimony of C. B. Johannesen.)

A. No, I am pretty sure no one said anything about a union.

Trial Examiner Persons: Either at the time they were discharged or at the time they were paid off or after they were paid off.

A. Not after either. There was no union mentioned to me.

Trial Examiner Persons: You recollect no mention about the union then?

A. No, no. I am pretty sure there was none. At least, I [2214] am sure there was none. I never can recollect it at all and things like that don't slip my memory easy.

Trial Examiner Persons: Have you anything whatever, any incident, in mind in connection with union activities which seemed to you should be criticized from the standpoint of good ship discipline or getting the ship's work done?

A. I don't understand quite what you mean.

Trial Examiner Persons: Let's read it, Mr. Reporter. I am not sure I phrased it well.

(The question was read.)

A. No.

Trial Examiner Persons: Anything further, Mr. Pipkin?

Redirect Examination

Q. (By Mr. Williams) The occasion on which you observed Zinkiewycz for two hours, will you tell the Examiner why you found it necessary to make that observation? Why you thought it was

(Testimony of C. B. Johannesen.)

necessary to make that observation? In other words, had there been anything in his previous conduct or previous method of doing his work or not doing his work that induced you to keep your eyes on him there for that about two hours? A. Yes, sure.

Q. Just tell the Examiner now.

A. He had been lagging on his work all along and so I thought I would go down there and watch him. I had a report [2215] from the boatswain that the man was lagging on his work; couldn't get nothing out of him.

Q. I am going to ask you this question: Did you have any animosity or hard feeling toward Zinkiewicz as a man?

A. No, sir, none whatsoever.

Q. You say that he was discharged at the end of his first voyage or that you thought you wanted to discharge him. You hadn't actually given him his discharge papers, had you, at the end of the first voyage? A. No papers, no, sir.

Q. You hadn't given him any papers?

A. No, sir.

Q. But he was told by you or the master that his services were no longer needed?

A. Yes, sir.

Q. But he asked to make another trip?

A. He asked to make another trip and he was given another chance. He came into my room and he said: "I will try to do better, Mr. Mate, if I can make another trip."

(Testimony of C. B. Johannesen.)

All right. The day in port he worked pretty good. The day we got outside, it was the same old song again.

Q. During that second voyage what was your method of treatment or how did you treat him as a seaman?

A. The same as the rest.

Q. I don't think you have yet testified and I don't think [2216] it is in the record as to when, referring to the voyages, either first or second, you kept him under observation for two hours. Is that the first or the second voyage?

A. The first voyage.

Q. It was the first voyage?

A. Yes, sir.

Q. And you reprimanded him at that time?

A. Yes, sir.

Q. And then took him back on the second trip?

A. Yes, sir.

Q. You used the expression that you were laying for him. What did you mean by that? Tell the Examiner what you meant by laying for him?

A. Watching him.

Q. Just like you would watch anybody else?

A. Yes, sure, just like you watch any one. Zinkiewicz wasn't doing his work. I had complaints from the boatswain about him. So I made up my mind "I am going down there and watch him and give him a thorough talking to."

Q. All right. Now then what?

A. At 3:00 o'clock when he went back for his coffee I talked to him, man to man. I said: "We

(Testimony of C. B. Johannesen.)

are all on board here to do our work and it has got to be done. If you don't do your work, the next fellow, your fellowman, has got to do your work for you. Now why don't you show yourself like a [2217] man and go to work and do your part of it?"

So he said: "Mr. Mate, I will."

That is all there was to that. That was forgotten right away.

Q. You also used the expression that you laid for him to get him and did get him. What did you mean by getting him? A. Getting him told.

Q. You meant detect him? A. Yes, sir.

Q. Detect him in his lagging? A. Yes, sir.

Mr. Martin: Just a minute, Mr. Examiner.

Mr. Williams: Strike it from the record. I will withdraw it.

Trial Examiner Persons: If you have an objection to make, Mr. Martin, if you will show that you are objecting it will look better in the record.

Mr. Martin: Yes, sir.

Trial Examiner Persons: The objection will be overruled, if any. Now read back what you have, Mr. Reporter.

(The last three questions and answers were read.)

Trial Examiner Persons: Now, Mr. Martin's objection, if any, was overruled.

Q. (By Mr. Williams) Just to be fair to everybody I will ask the witness this question: Tell the Examiner what you [2218] meant by the expression getting him. Tell in your own language now what you meant by that?

(Testimony of C. B. Johannesen.)

A. That means to get him told; what I think about him, the same as I explained there. Of course I might have used a little rough language to him.

Trial Examiner Persons: The record will show that this was done at sea.

A. Yes.

Trial Examiner Persons: Now with some anticipation of Mr. Martin, perhaps, I am going to ask another question, if I may. Did you in any sense get proof so that your talk to him would have a firm basis?

A. No, sir.

Mr. Williams: I don't know whether the witness understood that question or not.

Trial Examiner Persons: Read it and the answer.

(The question and answer were read.)

Trial Examiner Persons: You said "get him." Did you mean to get proof so that when you had your talk with him you would have something solid to base your talk on? Is that what you meant by getting him?

Read it, Mr. Reporter.

(The question was read.)

A. Yes.

Trial Examiner Persons: Objections run against the [2219] Examiner just the same as anybody else, Mr. Martin.

Mr. Martin: I am satisfied, Mr. Examiner.

Trial Examiner Persons: All right.

(Testimony of C. B. Johannesen.)

Mr. Williams: I think that is all I have.

Trial Examiner Persons: Any further questions, Mr. Martin?

Mr. Williams: Wait just a minute. That is all.

Trial Examiner Persons: Recross by Mr. Martin.

Recross Examination

Q. (By Mr. Martin) Where was the boat when you watched Mr. Zinkiewicz for two hours straight?

A. Around the Florida straits, I think. Just about going up the Florida straits.

Q. How long had she been out of Port Arthur?

A. Three days. On the fourth day, I think it was, if I am not mistaken.

Q. How long prior to the fourth day out had you first noticed that Mr. Zinkiewicz was lagging in his work?

A. From the second. On the third day the boatswain came and complained about him. [2220]

Q. That is the first notice you had had?

A. That is the first notice, yes.

Q. What did Mr. Zinkiewicz do between that time when the boatswain came to you on the third day and the afternoon of the fourth day that caused you to want to observe him for two solid hours in order to find out exactly what he was doing?

Trial Examiner Persons: Any time Mr. Johannesen you would like the question read, if you will just apply to the reporter he will read it for you.

A. Yes. I don't understand it.

(Testimony of C. B. Johannesen.)

(The last question was read.)

A. I don't remember now what he was doing. General work I guess. Let me see what we were doing before that? That is hard to remember, little minor things like that. I don't remember what it was.

Q. (By Mr. Martin) Well, as a rule you don't observe seamen for two solid hours who have been on your boat only four days unless there is some reason for it?

A. There is some I don't never have to look at. They go and perform their work and don't have to be watched.

Q. So it would be very unusual for you to watch a seaman for two solid hours? A. Yes, sir.

Q. He would have had to do something wouldn't he quite out of the ordinary so as to have brought himself to your atten- [2221] tion to such an extent that you would care to watch him for two solid hours?

A. I don't see where it could be anything out of the ordinary. When a man comes and complains to me that a certain man will not do any work, I am going to find out for myself if that is the truth, and therefore I am going to stay there and watch him and watch the amount of work that he does.

Q. Can you name any other seamen whose work you have watched for two straight hours to see what kind of work he was doing?

(Testimony of C. B. Johannesen.)

A. Yes. I watched Rosen painting that mast down. That took him four hours. I watched him for four hours sitting up there and then he didn't get finished with it.

Q. Now, when did that take place, Mr. Johannesen?

A. The same voyage. It must have been about 5 days or 6 days out. We were around about Hatteras. That should be five or six days.

Q. Anybody else?

A. Well, I watched several of them. If they don't perform their work well, I make the complaint to the master and the master makes the decision.

Q. Now, you testified before that Rosen's work began to slacken the second or third day out from Port Arthur on the first trip? A. Yes, sir.

Q. What if anything did Rosen do between that time and the [2222] fifth or sixth day out of port which caused you to note his work on that mast especially for four hours?

A. Not specially. You see the mast is right there in front of me and all I have to do is stay there and look at the man when he works and I can stay on the rail there or watch him anywhere from the ship and notice the way that he works and I said to myself: "Well, that is a nice piece of work that man is doing up there."

Q. Where were you standing?

A. On the after end of the midship house.

(Testimony of C. B. Johannesen.)

Q. Did you leave that point at all during those four hours? A. Yes, I did.

Q. For how long?

A. Oh, I will say 5 or 10 minutes. I went in and got me a cup of coffee occasionally and to smoke in my room and came back out again and there he sat. He wouldn't have shifted a foot. He just sat up there on the boatswain's chair.

Q. What mate was in charge of his work at that time? A. Me.

Q. Had you assigned him to that job?

A. Yes, through the boatswain.

Q. Through the boatswain? A. Yes.

Q. Can you be sure at this time that the boatswain didn't give Rosen something else to do during part of those four [2223] hours?

A. No, sir, when he got up in that boatswain's chair there he was comfortable. He was sitting there taking life easy. Of course, he came down for coffee and went back up again. He had 20 minutes for coffee.

Q. Well, now, what if anything had Rosen done between the second and third day and this later day, the fifth or sixth day out of Port Arthur, which caused you to note especially that he took four hours to do that job?

A. After we left Port Arthur? What was that? Mr. Martin: Read the question to him.

(The last question was read.)

(Testimony of C. B. Johannesen.)

A. Well, that is a hard question to answer I guess. He had been doing his work previously to that and lagging on it and I couldn't help but seeing it. Anyone could have seen him hanging up there in that boatswain's chair. You couldn't help that.

Q. (By Mr. Martin) Mr. Johannesen, when you fired Rosen and Buckless and Zinkiewycz did you tell to them all of the reasons why you were firing them?

A. No, sir. The only one that asked me the reason was Rosen. The other two took their money and left.

Q. Mr. Johannesen, have you ever criticized one man for standing another man's watch without first getting permission from you to do so? [2224]

A. I haven't criticized him, no.

Mr. Williams: Mr. Examiner, I don't know whether the witness thoroughly understands the meaning of the word "criticize." He might use some other word; "reprimand;" something of that sort.

Trial Examiner Persons: I thought the record was clear. If not——

Mr. Williams: The language was clear. I don't know whether he understood it or not.

(The last question and answer were read.)

Trial Examiner Persons: What did you think it meant to criticize a man, Mr. Johannesen?

A. I never said a word to the man about missing his watch.

(Testimony of C. B. Johannesen.)

Trial Examiner Persons: To him? To any man?

A. To any man.

Q. (By Mr. Martin) Have you ever fired a man at New York City?

A. Not on that ship.

Q. Have you on any Texas Company ship?

A. No, sir.

Q. Have you ever fired a man at Bayonne, New Jersey?

A. No, sir.

Q. Have you ever fired a man at New Orleans?

A. No, sir.

Q. Have you ever fired a man on The Texas Company ship at [2225] any port except Port Arthur?

A. No, sir.

Q. Is it or is it not a fact that The Texas Company is continually hiring and firing men at points other than Port Arthur?

A. Not that I know of.

Mr. Martin: That is all.

Trial Examiner Persons: I would like to ask this question.

Q. (By Trial Examiner Persons) How frequently, Mr. Johannesen does that main mast get a coat of paint?

A. Sir?

Q. How frequently does that main mast get a coat of paint?

A. Every three or four months.

Q. That is just routine is it?

A. Yes.

Trial Examiner Persons: Anything further?

Mr. Pipkin: No questions.

(Testimony of C. B. Johannesen.)

Mr. Martin: I have one or two more questions, if I may be permitted.

Trial Examiner Persons: Yes, Mr. Martin, but it is a bit discourteous to the mate. However, he says it will be all right.

(Discussion off the record.)

Q. (By Mr. Martin) Did you lay for Mr. Zinkiewicz for two [2226] hours solely to be able to tell him afterwards that you had watched him for two hours?

A. Yes, sir. I didn't only tell him that. I told him plenty.

Q. Wasn't it also so that you could tell some other people that you had watched him for two solid hours and what he had been doing?

A. No. I never told any other people about it. I told the captain. That is right.

Q. Now, after you had laid for Zinkiewicz for two hours during the first voyage and fired him at the end of that voyage and took him back on the second voyage, did you lay for him on the second voyage?

A. I watched him occasionally, sure, and I saw that he wouldn't make no improvement.

Q. Did you watch him a little more closely than you watched some other men perhaps?

A. I watched him and Rosen particularly.

Q. On the second trip?

A. Yes, to see if they wouldn't improve any.

(Testimony of C. B. Johannesen.)

Q. Now, you testified on direct examination that after you fired Zinkiewycz at the end of the first trip you had a conversation with Mr. Hand and then put him back to work. Is that correct?

A. Yes, sir. [2227]

Q. What did Mr. Hand say to you?

A. He told me that "We will try and let him go another trip. We will try him and see if he won't do better."

He had been up in the office and complained to Mr. Hand.

Trial Examiner Persons: To Mr. Hand about you?

A. No, no. About something. I don't know what it was about. Mr. Hand never told me. He said to try him another trip and he will do better. So he came in my room and said: "Well, Mr. Mate, you take me back and I will do better this trip."

Q. Was Buckless present when you had that conversation with Mr. Hand? A. No, sir.

Q. And was Rosen? A. No, sir.

Q. Are you sure that neither of them overheard that conversation?

A. There was no one there except me and Mr. Hand. I believe he talked to Buckless afterward, but I didn't hear what they were talking about. At least I saw them going back aft together.

Q. Hadn't Buckless and Rosen talked with Mr. Hand before about the Zinkiewycz case?

A. I don't think so.

(Testimony of C. B. Johannesen.)

Q. Didn't Mr. Hand tell you that they had?

[2228]

A. No, sir.

Q. Did Mr. Hand make any reference to Buckless or Rosen? A. No, sir, none whatsoever.

Q. Did Buckless or Rosen complain to you about the discharge of Zinkiewycz at the end of that first voyage? A. No.

Q. Did you inform Zinkiewycz and Rosen at the beginning of the second voyage that they were on probation that trip?

A. On probation? Yes, I told them, both of them, if they didn't pick up and do their work "We will have to get somebody else that will do it."

Mr. Martin: That is all. Thank you. [2229]

G. A. BERGMAN

a witness recalled by and on behalf of the respondent, being previously sworn, was examined and testified as follows:

Redirect Examination

Q. (By Mr. Pipkin) Mr. Bergman, since you were on the witness stand yesterday have you had an opportunity to check over your crew list?

A. I decided I didn't quite understand the question of change in the crew, so I thought I had better check them up and see.

Q. For what period of time have you checked your crew list over?

(Testimony of G. A. Bergman.)

A. From January to November 6 this year.

Q. Does that include the first——

A. The first voyage of this year to November 6 of this year. [2253]

Q. Does that include the first voyage of the year through the beginning of the last voyage you took on the “Washington” before coming ashore?

A. Yes. That was the voyage beginning November 6, I believe.

Q. On the crew list that was introduced yesterday, Captain, there is one column “Paid off previous trip, left ship.” You identified yesterday in that column the names of Buckless, Zinkiewycz and Rosen and another one was included.

A. It was on one of them crew lists.

Q. Each time a man left a ship did you fill out the blanks left on the back of the crew list for that purpose?

A. Yes, whether he is chief engineer, chief mate, first assistant, whether he is taking a vacation, whether he is quitting himself, whether he is going to the hospital. I must put that down on the crew list.

Q. During the period of time you have talked about here how many people during that period of time have left the ship according to your entries?

A. According to the entries on the crew list that you have there, I added it up and it is 81 members, including the chief engineer and all the other mem-

(Testimony of G. A. Bergman.)

bers that went off on vacation, went to the hospital, or left the ship of their own accord.

Q. I note here some of these men left for time off.
A. Yes, sir.

Q. Some of them were on relief trips only?
[2254]

A. Yes, sir.

Q. Some of them left because of injuries?

A. Yes, sir.

Q. Some of them left because of discharges?

A. Yes, sir.

Q. For illness in the family? A. Yes, sir.

Q. Drunkenness and insubordination?

A. Everything.

Q. Every reason you have listed?

A. Every time a man gets off the ship, I put it down.

Q. Some of those 81 have come back to the ship from time to time?

A. Stay off a couple of trips and come back again.

Mr. Pipkin: That testimony, Mr. Examiner, is offered in line with the inquiry you directed the witness' attention to yesterday afternoon.

Trial Examiner Persons: Yes, I remember.

Mr. Pipkin: That is all I want to bring out.

Trial Examiner Persons: Could we ask the question this way, Captain Bergman? If you took your crew list on the first voyage and your crew list now, including men on vacation, if there are

(Testimony of G. A. Bergman.)

'any, how many names would be different on the crew list now from the crew list of the first voyage this year? A. I couldn't tell you. [2255]

Q. Let's have your impression first and then let's count them. Could we do that? What would you think?

A. The men that actually left the ship, coming back again, went to the hospital and came back again, and so on, I added it up last night and it was 81.

Q. And your crew was 35, is that correct?

A. Yes, sir.

Q. You had 35 on your first voyage?

A. Always 35 men.

Q. And you have 35 now? A. Yes, sir.

Q. Of the 35 you have now, how many of them did you have on that first voyage?

A. I can't tell you that unless I check it up.

Q. What would you think? What would be your best estimate?

A. I couldn't tell you unless I looked up the crew list.

Q. You can't tell exactly, but then I think you probably know, Captain.

A. I don't want to say wrong. Might be half the crew.

Q. About half is your best guess?

A. My best guess, more or less.

Q. Suppose we have the Captain check and see.

Mr. Pipkin: It is going to be a pretty lengthy situation, Mr. Examiner.

(Testimony of G. A. Bergman.)

Q. (By Trial Examiner Persons) Well, have you the same [2256] captain you had then?

A. I am the same man.

Q. Have you the same mate you had on that first voyage? A. Yes.

Q. Have you the same engineer?

A. The same chief and the same assistants.

Q. Have you the same assistant engineers?

A. The same four engineers.

Q. The same steward?

A. The same steward.

Q. The same radio man?

A. The same radio man, the same mates; the same three mates.

Q. There are three engineer officers?

A. Four with the chief.

Q. Four and four are eight and the radio man and the steward make ten? A. Yes, sir.

Q. Of the three quartermasters, how many are different?

A. I don't know if there is any.

Q. Do you have the same boatswain?

A. No, we haven't got the same boatswain.

Q. The boatswain is changed?

A. Yes. The same oilers and firemen are there.

Mr. Pipkin: You are taking this by titles. He can check that easily with reference to the January 12 and the [2257] November 6 list. He can answer your inquiry about the quartermasters without any trouble. They are all listed together.

(Testimony of G. A. Bergman.)

A. No quartermasters. Not the same quartermasters.

Q. (By Trial Examiner Persons) None of the three are the same?

A. No.

Q. Would you regard the three you have on the last crew list as the permanent quartermasters for your ship?

A. Yes. They have been quite a while there.

Q. And as far as you know now, you expect them to continue?

A. Yes, sir. They have been there over six months or more.

Q. While I think of it, I just suggest this question: How do you manage on the vacation time? They get two weeks' vacation if they are long term men and one week for short service, but the voyage is ordinarily three weeks.

A. That is arranged by the office. I haven't had the experience of arranging for any vacations.

Q. But if a man on your ship is entitled to a vacation and has gone on vacation——

A. He goes and sees Mr. Hand and he arranges it.

Q. Is he gone for a voyage or only for his vacation time?

A. Well, he is off the ship for the voyage. [2258]

Q. Do you know what happens to him for the extra week or two weeks?

(Testimony of G. A. Bergman.)

A. I don't know. That is up to the office. I don't arrange any vacations.

Q. But you do know from your crew list whether he is on vacation?

A. Oh, yes, they tell me he is going on vacation.

Q. You put that on the crew list?

A. I put that on the record; on the back of it.

Mr. Pipkin: I tell you what I can do to materially shorten it: I can give the names for the January 12th list and the November 6th list to the stenographer.

Trial Examiner Persons: Give us the two lists and the ratings?

Mr. Pipkin: All right, sir.

Trial Examiner Persons: Any questions, Mr. Martin, of this witness?

Mr. Martin: I have no questions, Mr. Examiner, concerning the subject matter of this last inquiry. I would like to ask him a couple of other questions if Mr. Pipkin doesn't object.

Mr. Pipkin: Well, I don't want to be in the position of keeping you from examining the witness. I thought you were through with him yesterday though.

Mr. Martin: As a matter of fact, I was, but this has [2259] arisen since.

Mr. Pipkin: Go ahead.

Trial Examiner Persons: Go ahead, Mr. Martin. Let's get on.

(Testimony of G. A. Bergman.)

Cross Examination

Q. (By Mr. Martin) Captain Bergman, were you captain of the "Washington" in 1931?

A. Yes, sir.

Q. What was the final port of discharge in the trips you were making in 1931?

A. I will have to look at the records for that. That is too far back to remember.

Mr. Pipkin: I can't see the relevancy of such an inquiry to the proceeding here, Mr. Examiner.

Trial Examiner Persons: I don't either, but we have preliminary questions and things come out later. He said he can't remember, Mr. Martin.

Q. (By Mr. Martin) Has Port Arthur always been the final port of discharge?

A. While we are trading to Port Arthur, running coastwise up north and down here again on those voyages.

Q. Now, in 1931, did you take a trip on the "Washington" out to California?

A. Yes. I got to look in the log books. I can't answer you directly. [2260]

Trial Examiner Persons: Did you take a trip to California at some time or other on the "Washington"?

A. If I remember rightly I left California during the month of February on the "Washington" for the east coast.

Trial Examiner Persons: What year?

A. 1931.

(Testimony of G. A. Bergman.)

Trial Examiner Persons: As master?

A. As master.

Q. (By Mr. Martin) Was the boat at Los Angeles, California, on September 30, 1931?

Mr. Williams: Mr. Examiner——

A. I don't know that unless——

Mr. Williams: Just a moment, Captain. Mr. Examiner, that is going back a little over 7 years; a little over 7 years; and unless the counsel is going to be able to connect it up with this matter now under examination, I think it is going entirely too far afield and is irrelevant to this inquiry and I make that objection.

Trial Examiner Persons: Judge Williams, I can hardly forebear saying that there was a time this morning when you wanted to go back to 1919.

Mr. Williams: Well, I don't remember the occasion or couldn't.

Trial Examiner Persons: I do have some doubts about the fairness of asking Captain Bergman about a definite date [2261] at a certain port in 1931 in view of what the record shows of his movements about from port to port since that date. Can you remember, Captain Bergman?

A. I have been going in and out of ports once a week and when I get out of a port I forget it for the very simple reason I have so many things to attend to and such a matter as going in and out of ports I try to forget.

(Testimony of G. A. Bergman.)

Trial Examiner Persons: I am sure Mr. Martin will forgive you if you say you can't remember that date in that port.

Mr. Pipkin: To expedite that matter, can you and Judge Williams and Mr. Martin and I have a little discussion off the record to find out what he is talking about? We don't want to encumber this record, and if what you are getting to eventually, Mr. Martin, is not properly admissible, we want to get to it now before we get it in the record, whatever you are shooting at.

Trial Examiner Persons: Suppose we come to your table and discuss it, Mr. Pipkin?

Mr. Pipkin: All right.

(Discussion off the record.)

Q. (By Mr. Martin) Well, Captain Bergman, have you taken many trips to California?

A. Yes.

Q. In the "Washington"? [2262]

A. Yes, we used to run steady for years between California and the east coast.

Mr. Pipkin: I thought we had straightened this thing out. I object to any further testimony along the line of questions he has suggested. It would be irrelevant and immaterial, too far to go back and be material to any issue in this case. If the ruling was proper this morning on the 20 year ago navy matter, it is certainly proper in connection with this matter.

(Testimony of G. A. Bergman.)

Trial Examiner Persons: The objection will be sustained.

Mr. Martin: I trust, Mr. Examiner, not on the grounds stated by counsel.

Trial Examiner Persons: The objection will be sustained, Mr. Martin. Would you care to make an offer of proof for consideration of the Board?

Mr. Martin: Yes, I would like to state that I can prove that when Los Angeles was not the final port of discharge Captain Bergman signed the certificate of discharge and in fact fired one Joseph Dugan in Los Angeles on September 30, 1931.

Mr. Pipkin: Are you having in mind an intercoastal voyage, Mr. Martin?

Mr. Martin: Yes, that is right; intercoastal.

Mr. Pipkin: Well, your Hoonr, I don't know where that leavees us now. He says he has proof as to that. The head of [2263] Marine Department here says that Los Angeles was at that time a final port of discharge.

Trial Examiner Persons: Was not?

Mr. Pipkin: Was.

Trial Examiner Persons: What is that?

Mr. Pipkin: Was a final port of discharge and signing on before the Commissioner for intercoastal voyages at that time, with the custom of paying off at Los Angeles. He says he can prove that and I say the head of our Marine Department has told us that at that time they paid off at Los Angeles before Commissioners for intercoastal voyages.

(Testimony of G. A. Bergman.)

Trial Examiner Persons: For the record and for my own benefit, may I ask about the definition of "intercoastal." That seems to go from the Gulf or Atlantic Coast to California points.

Mr. Pipkin: Atlantic to Pacific or Pacific to Atlantic Coast.

Trial Examiner Persons: But from the Gulf to the Atlantic Coast is not intercoastal? That is coast-wise?

Mr. Pipkin: That is right and I understand that an intercoastal voyage requires signing on before a Commissioner.

Trial Examiner Persons: May I just ask a question to satisfy my own curiosity. That is based on the conditions existing before the canal was open, when they went around South America. [2264]

Mr. Willaims: Not necessarily, sir. It is a long voyage. I wish to make this objection to the question. Mr. Martin in framing that question has testified——

Trial Examiner Persons: That is an offer of proof. That is for the benefit of the Board in considering the Examiner's ruling in excluding the testimony.

Mr. Williams: But he used this statement: When Los Angeles was not a port of discharge. He said that, but we don't know that.

Trial Examiner Persons: Do you wish to object to that statement?

Mr. Williams: I object to that statement.

Trial Examiner Persons: You make the counter statement that at that time on intercoastal voyages it was a port of final discharge?

Mr. Williams: I make the counter statement that I just don't know and he said it was so and I object to that until he proves it.

Mr. Pipkin: Are you through with the witness?

Mr. Martin: Yes, I am through. That is all.

Trial Examiner Persons: You will be excused, Captain.

(Discussion off the record.) [2265]

BOARD'S EXHIBIT No. 6
CONSTITUTION
of the
NATIONAL MARITIME UNION OF AMERICA
Affiliated with the CIO
[Insignia]

Founded May 3, 1937

As adopted by the Constitutional Convention held in New York City, July 19, 1937, and ratified by referendum vote of the membership between Sept. 15 and Nov. 15, 1937.

Preamble

Whereas organization is the only means by which the seamen may hope to advance their interests and

(Board's Exhibit No. 6—continued.)

attain final emancipation from the many evils attending their calling, and

Whereas we have learned from bitter experience that the main aim and purpose of the employing interests is at all times to divide and keep apart organizations endeavoring to unite for their common interests, and

Whereas the industrial form of organization will insure more unified and harmonious action in all matters directly affecting the interests and welfare of our membership, we

Therefore declare ourselves in favor of the organization of an Industrial Union, to be known as the National Maritime Union of America, and we further declare that in order to protect the interests of the majority of the membership who are aboard ship and in ports throughout the world, we have adopted this Constitution.

Objectives

Article I

Section 1—Name: This organization shall be known as the National Maritime Union of America. It shall not be committed to favor any particular religious creed or political belief; neither shall affiliation herewith interfere with the religious or political freedom of its members, and for purpose of brevity to be known as the NMU.

(Board's Exhibit No. 6—continued.)

Sec. 2—Powers: The powers exercised by the National Council hereinafter provided for, shall be only those powers granted to it by the members of the Union, acting through a convention composed of duly elected delegates, and the National Council shall not exercise any powers not specifically granted to it by the membership.

Sec. 3—Objects: (a) To unite in one organization regardless of creed, color, nationality or political affiliation all workmen eligible for membership, directly or indirectly engaged in the shipping and maritime transportation industry.

(b) To increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

(c) To strive for a minimum wage scale for all members and to obtain reasonable working hours which should not go below the minimum set by the Union.

(d) To secure equitable statutory old age pensions, unemployment insurance and accident insurance.

(e) To insure by legislative enactment laws protecting the limbs, lives and health of our members; especially our right to organize and to strike; prohibiting the use of deception to secure strikebreakers; preventing the employment of privately armed guards during labor disputes, and such other legislation as will be beneficial to the members of our organization.

(Board's Exhibit No. 6—continued.)

(f) To promote and extend the adoption of union principles and affiliation with labor unions and national labor organizations.

(g) To insure greater stability and safety in the construction and sailing of ships and to secure increased ship's accommodations for seamen and the maintenance of adequate and sanitary accommodations.

(h) To provide an efficient class of men who are qualified to perform their duties.

(i) To secure the enactment of a manning scale for all classes of vessels based on gross tonnage; adequate working conditions and working hours through legislation and/or economic action.

(j) To assist the seamen of other countries in the work of organization and federation to the end of establishing the Brotherhood of the Sea.

(k) To assist other bona fide workers organized and unorganized whenever possible and feasible in the attainment of their just demands.

(l) To establish a legislative committee in Washington whose object shall be among others, to have passed laws beneficial to the interests of maritime workers and enabling seamen to exercise their franchise to vote either directly or by absentee ballot.

(m) The National Maritime Union of America shall cooperate with all other maritime unions for the purpose of defending the immediate interest of

(Board's Exhibit No. 6—continued.)

all maritime workers involved and shall strive for the unification of all maritime workers on a national scale.

Affiliation

Article II

Section 1—The National Maritime Union of America shall apply for affiliation with the Committee for Industrial Organization, upon its organization, or with any National or International Labor Organization hereafter to be organized on a national or international basis, subject to a referendum of the membership, which will unite the workers in all industries, provided that such labor organization will be composed of an affiliation of unions organized on an industrial basis.

Sec. 2—That upon the affiliation of any new District, the three (3) members elected to the District Committee of such District shall automatically become members of the National Council, and such District Committee shall perform the duties and have the powers at the time vested in the members of any District Committee at the present time affiliated with the National Maritime Union of America.

Sec. 3—Any bona fide group of workers engaged in shipping or in connection with the marine transportation industry, not yet affiliated with the National Maritime Union of America, may become af-

(Board's Exhibit No. 6—continued.)

filiated as a Division of the District, where the particular Division may find itself.

Sec. 4—The membership at a regular joint meeting held in branches or headquarters in each district may by a majority vote affiliate with any local or state trades or labor council, provided that the principles upon which the local or state trades or labor council is based are not in conflict or inconsistent with the aims and purpose herein recited. In the event of a tie vote, then the President shall cast the deciding vote.

System of Organization

Article III

Section 1—The biennial convention of delegates elected from ship and shore by general vote, shall be the authority of this Union. And this Constitution and any By-Laws adopted by subsequent conventions, hereinafter provided for and ratified by the membership, shall be the governing agency of the National Maritime Union of America.

Sec. 2—The National Maritime Union of America shall be divided into distinct districts, said districts to be known as the Atlantic District, Gulf District, Great Lakes District, and any other District that may at some future time be formed and become affiliated with any part of the National Maritime Union of America.

(a) The Atlantic District shall include all maritime workers engaged in the shipping and marine

(Board's Exhibit No. 6—continued.)

transportation industry; in ports, bays, sounds, rivers and estuaries lying between the most northeasterly point in the State of Maine, along the Atlantic and including the City of Key West, Florida and Puerto Rico. The headquarters of the Atlantic District shall be in the City of New York.

(b) The Gulf District shall include all maritime workers engaged in the shipping and marine transportation industry in all ports lying in the Gulf, sounds, bays and rivers flowing into the Gulf of Mexico and lying between Key West and the most south-westerly point of the State of Texas. The headquarters of the Gulf District shall be in the City of New Orleans.

(c) The Great Lakes District shall include all maritime workers engaged in the shipping and marine transportation industry on the Great Lakes, canals or rivers abutting or joining the Great Lakes between the mouth of the St. Lawrence River and the most westerly point of Lake Superior. And the headquarters of the Great Lakes District shall be in the city selected by this district.

Sec. 3—Each District shall have complete autonomy in all of its local affairs, except as hereinafter provided, and shall be governed by its elected District officers and a District Committee, composed of these three elected officers, known as the District Secretary, District Treasurer, District Chairman and one member from each division who shall be

(Board's Exhibit No. 6—continued.)

elected Secretary-Treasurer for that Division at Headquarters.

Sec. 4—Each District shall have complete autonomy with respect to the local affairs affecting members in its District, but any matter which may, directly or indirectly, affect all the members of the Union on a National basis, shall be under the jurisdiction of the National Council, except as may be hereinafter provided.

Sec. 5—All of the District Officers and the Secretary-Treasurer of each division at headquarters as well as branch agents and joint branch agents shall be elected annually by referendum vote as provided hereinafter.

Sec. 6—Patrolmen charged with the responsibility of visiting ships and dealing directly with union members shall be elected as provided for hereinafter.

National Council

Article IV

Section 1—The National Council shall be composed of three officers to be known as the National President, National Vice-President and National Secretary-Treasurer, who, jointly with the three district officers of each District, shall constitute the National Council and shall act on all matters which affect all members of the National Maritime Union of America on a national basis, except as may be hereinafter provided.

(Board's Exhibit No. 6—continued.)

Sec. 2—The National Council shall maintain its Headquarters in the City of New York.

Sec. 3—The National Council shall meet at least once every three months; the first meeting shall be held on the first of the month immediately after the biennial convention is adjourned and on the first day of every third month thereafter. However, any three members of any District Committee may demand that a Special General Meeting of the National Council be called, and such meeting shall be called no later than one week after such notice is given in writing. At a special meeting of the National Council any and all business that might be transacted at the quarterly meeting of the Council may be transacted at this meeting.

Sec. 4—A quorum of the National Council shall consist of at least one (1) National officer and two members from each District Committee who must be present to constitute said quorum and the business of the National Council shall be transacted through a majority of a quorum of the National Council.

Sec. 5—At all times between the holding of either regular or special meetings of the National Council any two National officers and three District officers from the District affected by an emergency shall constitute a Sub-Committee of the National Council, and shall have power to transact the emergency business of the District affected.

(Board's Exhibit No. 6—continued.)

Powers and Duties of the National Council

Article V

Section 1—The National Council shall have only such powers as are delegated to it by the Constitution and By-Laws adopted by duly elected delegates convened in any biennial convention, and the Council shall not exercise any powers which are not specifically granted in the exercise of the powers directly granted.

Sec. 2—The duties of the National Council shall be to prepare and submit to the biennial convention of delegates reports on:

- (a) the best means to observe the rules of the union;
- (b) the best method of safeguarding the interests of the members of the Union;
- (c) questions on which the rules or any agreement are silent or doubtful;
- (d) any inquiry or suggestion for the settlement of the differences between various Divisions of the Union, or between Divisions and members of the Union and between the Branches of the Union, or Divisions of the Union at various Branches, or between the National Maritime Union of America, and any other Union affiliated with the Committee for Industrial Organization or any other National Organization with which the National Maritime Union of America may be affiliated;

(Board's Exhibit No. 6—continued.)

(e) questions of difference between this Union and any other Union;

(f) the best methods of investing and protecting the available funds of the Union;

(g) on negotiations for the making of agreements;

(h) any inquiry made as to the management of the affairs of any Branch of this Union, and to make any recommendation such inquiry may warrant;

(i) the work of the Union since the previous convention was held.

Sec. 3—The National Council shall employ any clerical help needed to conduct the business of the National Council.

Sec. 4—The National Council shall record all of its financial transactions in a double entry set of books; maintain a separate deposit account, and pay the salaries of the National officers and the salaries of the necessary clerical staff.

Sec. 5—Checks or other instruments for the withdrawal of funds of the Union shall be drawn on the signature of any two of the following officers: National President, National Vice-President, National Secretary-Treasurer. Each of the officers shall be bonded in the sum of \$10,000, the premium to be paid by the Union. No check or other instrument withdrawing more than \$500 shall be executed unless ordered in writing by the National Council.

(Board's Exhibit No. 6—continued.)

Sec. 6—The National Council shall have power to hear and decide appeals which may be taken by any member of the National Maritime Union of America, appealing from a decision of the District Committee or from any trial committee elected to try a member for violating the provisions of this Constitution, and from whose decision the aggrieved party desires to appeal.

Sec. 7—It shall be the duty of the National Council to deposit all monies received as revenue of whatever description, in a bank or banks to be agreed upon by the Council, provided the banks are friendly to labor.

Sec. 8—The National Council shall have power to incur debts or disburse the funds of the Union, and no individual member of the Council, whether he be a National officer, officer or member, shall have authority to disburse any monies or incur any debts not previously authorized by a two-thirds vote of the National Council permitting such expenditure.

Sec. 9—It shall be the duty of every member of the National Council to be present at all regular or special meetings, provided for by this Constitution, unless unavoidably detained by illness or because of special engagement in Union business.

Sec. 10—Real Estate owned or acquired by the National Maritime Union of America shall be held in the name of the National President, National Vice-President, National Secretary-Treasurer and

(Board's Exhibit No. 6—continued.)

their successors in office as trustees, for the National Maritime Union of America.

Sec. 11—The Council shall have power between conventions, by a two-thirds vote, to recommend the calling of a general strike, but under no circumstances shall it call such a general strike until approved by a referendum vote of the membership.

Sec. 12—Questions coming before the National Council may be decided by a unit vote of its members. Where a unit vote is taken, a full quorum must be present and the Vice-President and the Secretary-Treasurer shall be entitled to vote; but, in the event of a tie vote the President will cast the deciding vote.

Sec. 13—The publication to be issued by the National Maritime Union of America shall be known as the National Maritime Union Pilot, and shall be managed by a Board of three, an Editor-in-Chief, Assistant Editor, and a Managing Editor, and in addition a Corresponding Editor for each District. The Editor-in-Chief shall be a member in good standing of the American Newspaper Guild. The Assistant Editor, Managing Editor and Corresponding Editors shall be bona fide seamen members of the Union. The Editor-in-Chief, Assistant Editor, and the Managing Editor shall be elected by a two-thirds vote of the National Council and the salaries of all editors shall be fixed by the said Council.

The Editor-in-Chief, Assistant Editor and Managing Editor may be removed by either (1) a two-

(Board's Exhibit No. 6—continued.)

thirds vote of the National Council or by, (2) the adoption of a resolution within a period of a month by two regular membership meetings held in any one district. Upon the receipt of any two such resolutions by the National Council a special meeting of the Council must be called immediately. The Editor or Editors charged must be immediately suspended pending a decision on the charges.

The Corresponding Editors may be removed at regular meetings called at headquarters in their respective districts. The Corresponding Editors may be suspended upon the request of a resolution adopted at any two branch or at a divisional meeting at headquarters.

The National Council shall at all times be held directly responsible to the membership for the policy of the Pilot. Applicants' applications for the positions of Editor must be presented in writing giving full particulars of their qualifications. The National Council must investigate all qualifications before considering the applications.

Sec. 14—The Legislative Committee shall consist of two members who shall be bona fide seamen, members of the Union and shall be elected by the National Council. No member of the National Council shall be a member of the Legislative Committee. The Legislative Committee shall at all times be subject to the instructions of the National Council. The National Council is at all times responsible for work of the Legislative Committee.

(Board's Exhibit No. 6—continued.)

Any member of the Legislative Committee shall be subject to removal by a two-thirds vote of the National Council. When Congress is not in session it should consist of not more than one member.

Organization of the District Committee

Article VI

Section 1—The District Committee shall be composed of the three (3) District officers to be known as the District Chairman, District Secretary and District Treasurer, as well as the Secretary-Treasurer of each Division at Headquarters.

Sec. 2—The District Committee shall meet at least once each month, and a quorum of the Committee shall consist of five members, provided that each Division is represented by at least one member and at least two of the District officers.

Sec. 3—The District Committee shall meet on the 15th day of each month, unless the 15th should fall on a Sunday; or more often, upon the joint written demand either of (a) any two Secretaries of Headquarters Divisions or (b) upon resolutions adopted by the membership meetings of any two divisions of any two ports requesting such a meeting. Said meeting to take place no later than three days after such written demand is made.

(Board's Exhibit No. 6—continued.)

Powers and Duties of the District
Committee

Article VII

Section 1—Each District Committee shall employ any clerical help, provided they are union members, necessary to conduct the local business of each Division.

Sec. 2—The District Committee shall be responsible for the collection of dues, fines and assessments from every member in its District. Said money shall be deposited in a bank friendly to labor, selected by the District Committee, and all checks or other instruments for the withdrawal of funds collected by the District Committee, shall be drawn on the signature of any two of the following: District Chairman, District Secretary and District Treasurer.

Sec. 3—Each of the District officers shall be bonded in the sum of \$10,000, the premium to be paid by the District Committee. No check or other instrument withdrawing more than \$300 shall be executed unless specifically ordered in writing by the District Committee.

Sec. 4—The District Committee shall record all of its financial transactions in a regular double entry set of books; and on the first of each month, shall submit to the National Council a statement indicating all monies received during that month, all monies expended to meet the immediate obligations

(Board's Exhibit No. 6—continued.)

in the form of salaries, rent and incidentals, as well as a per capita tax of 25 percent of all monies received as dues, assessments or otherwise, by the District Committee, to be published in full in the Pilot.

Sec. 5—The District Committee shall have the power to supervise all the activities of all Divisions at Headquarters and Branches and the District Committee shall hear and make recommendations on all appeals taken from the decisions of Division officers or the decisions of Trial Committees elected at Division meetings in their respective Districts. Their recommendations shall be submitted to the Branch involved for ratification or rejection by the membership.

Sec. 6—Each District shall conduct annually, by secret ballot, a referendum vote for the election of District officers, Division Branch Agents and Joint Branch Agents.

Sec. 7—These District elections shall be held during the months of December and January of each year, and balloting shall continue throughout these two months, beginning on the first day of December at 8:00 A. M. and ending on the 31st of January at 6 P. M.

Sec. 8—At the annual election immediately preceding the biennial National Convention there shall be elected in each District as many delegates to the biennial convention as the District is entitled to, and in addition to the said delegates there shall

(Board's Exhibit No. 6—continued.)

also be elected three alternate delegates who shall take the place made vacant by reason of the death, resignation, disability or disqualification of any duly elected delegate. The District Committee shall designate that available alternate who, during the election, received the highest number of ballots.

Sec. 9—For all ports other than headquarters, the number of agents and patrolmen shall be determined by the requirements and needs of that port, subject to the recommendations of the District Committee and the approval of the membership of the respective ports. The agents and the patrolmen in each port shall constitute a Port Committee. A chairman shall be elected from this committee at a joint membership meeting. The port chairman shall be responsible to the District Committee and the membership for the coordination of that port.

Sec. 10—The District Committee shall have compiled a list of those ships that will be outside territorial waters during the period covering the elections.

Sec. 11—The District Committee shall instruct the Balloting Committee to forward sufficient copies of the ballots to the ships' committee together with instructions and all other material necessary to insure proper voting procedure.

Sec. 12—It shall be the duty of the District Committee to submit a report of the results of the National and District elections and this report shall specifically indicate the balloting on board ships.

(Board's Exhibit No. 6--continued.)

Division Organization

Article VIII

Section 1—Each Division shall have complete autonomy with respect to all local matters affecting each Division. All rules and regulations affecting in any way whatsoever each Division shall be proposed and adopted by the membership of each Division at their regular meetings; provided, however, that no Division shall propose and adopt rules or regulations which will in any way conflict with the provisions of this Constitution.

Sec. 2—At headquarters each Division shall hold at least one meeting each week. These meetings shall be presided over by a Chairman elected by the membership.

Sec. 3—Minutes of the meeting shall be recorded and copies forwarded to all branches and the District Committee's office.

Sec. 4—Twenty-five full members in good standing shall constitute a quorum for any Division meeting held at Headquarters, and in ports outside of New York, where each Division maintains its own agency, fifteen shall constitute a quorum except as hereinafter provided.

Sec. 5—In those ports where the Union shall maintain joint agencies for the three Divisions, membership meetings shall be held once a week, and a quorum in those ports shall be twenty-five full

(Board's Exhibit No. 6—continued.)

members in good standing, provided at least five from each Division are present.

Sec. 6—No membership meeting, held either at Headquarters or in branches, whether the meeting be a Division meeting or a joint meeting, shall donate more than \$50 for any cause.

Sec. 7—Patrolmen shall be elected at membership meetings as hereinafter provided.

Sec. 8—All office and clerical help at Headquarters shall be employed by the Division Secretary-Treasurer with the approval of the membership at meetings.

Sec. 9—In those ports other than Headquarters, where agencies are maintained, Patrolmen shall be elected at membership meetings, and the office help shall be employed by the branch agent, all subject to the approval of the joint membership meetings.

Sec. 10—Any Division which disapproves of any action taken by the District Committee, may, upon a resolution adopted by a membership meeting request that the National Council inquire into and act upon the complaint filed by the Division against the action of the District Committee.

Sec. 11—Each Division may adopt such rules and regulations which affect the members of its Division. However, upon the written complaint of any other Division claiming to be affected by a rule and regulation adopted by another Division, the same shall be reviewed by the District Committee,

(Board's Exhibit No. 6—continued.)

and the decision of the District Committee shall be subject to the approval of joint meetings at Headquarters and Branches.

Sec. 12—Each Division shall record all of its financial transactions in a double entry set of books, and shall send to the District Committee's office not later than Tuesday in each week, a statement indicating the income and the expenditures of the preceding week. This statement shall be furnished on the form and in the manner provided by the District Committee and shall be published in the Pilot.

Sec. 13—Each Division and District office shall maintain a card index system, in which each card shall give the name, address, official number and amount paid by each member.

Sec. 14—Each Division shall forward to the District Committee 50% of all monies collected by it, in the form of dues, initiation fees, assessments or fines and the remaining 50% shall be used to defray the immediate and ultimate expenses of each Division; the District Committee, however, shall be the arbiter of the reasonableness of any expenditures made by the Division.

Sec. 15—Patrolmen shall be assigned to regular districts around the harbor. They shall visit the crews of all vessels in the Port; to collect dues; to carry the latest news of the Union to the crews on the ships; to enforce agreements with the employers; to advise and discuss with the members their grievances and the adjustment of the same when-

(Board's Exhibit No. 6—continued.)

ever possible. They shall turn over to the local officers in their respective Ports all monies collected within twenty-four (24) hours after receiving same. Patrolmen shall at all times carry out instructions issued to them by Division officers and also shall make daily reports of work done by them.

Sec. 16—The reports to be forwarded by joint agents shall be on forms prepared by the District Committee, and the rules and regulations adopted by the District Committee for the regulation of branch agents are to be strictly adhered to.

Sec. 17—The duties, responsibilities and obligations of joint agents shall be the same as those of branch Division agents.

Conventions

Article IX

Section 1—The National Maritime Union of America shall meet biennially in general Convention on the first Monday in July in the city designated by the previous Convention.

Sec. 2—Should no Convention be held for a period of twenty-five months after the last Convention, the salaries of the National officers shall be withheld and none paid to them until the Convention will have met.

Sec. 3—Representation from ships and shore at the biennial Convention shall be upon the following basis:

(Board's Exhibit No. 6—continued.)

(a) Each District Division of the National Maritime Union of America at Headquarters shall be entitled to one Delegate for every 200 paid up members or fraction thereof, and Divisions of the Union with a membership of more than 200, but not more than 500 shall be entitled to two (2) delegates.

(b) Divisions with a membership of more than 500 but not more than 1,000 shall be entitled to four (4) delegates.

(c) Divisions of the Union with a membership of more than 5,000 but not more than 11,000 shall be entitled to eight (8) delegates for the first 5,000 and one (1) delegate for each additional 2,000 members or portion thereof.

(d) The Divisions of the Union with a membership of more than 11,000 shall be entitled to eleven (11) delegates for the first 11,000 members and one (1) delegate for each additional 5,000 members or portion thereof.

(e) The number of members above mentioned shall be computed upon the basis of the average number of members in good standing in the Division of the Union during the last six (6) months preceding the month in which the call of the Convention is issued.

Sec. 4—The delegates elected to attend all National Conventions of the National Maritime Union of America, or conventions of any National or International Federation with which the National Maritime Union of America may become affiliated in

(Board's Exhibit No. 6—continued.)

the future, may be instructed on specific questions by resolutions made and adopted at joint membership meetings held at each District Headquarters prior to the holding of any Convention. When delegates accredited to any convention are instructed to vote in a specific manner on specific questions, the entire delegation shall vote as a unit, in accordance with the instructions given to them. On questions upon which they do not receive specific instructions they shall vote as a unit in the manner decided by a two-thirds vote of the delegation. The delegates to any National Convention of the National Maritime Union of America or any Convention of a National or International Federation, shall render a report to a joint membership meeting held at the District headquarters in each District, as well as a report to the next succeeding biennial Convention.

Delegates to the Convention from Ships

Sec. 5—Delegates from and to represent ships' crews shall be elected at a joint meeting of the members of the Union aboard ship.

Representation of ships crews shall be on the following basis:

(a) Ships with less than 100 registered crew shall be entitled to send one (1) delegate with one (1) vote.

(b) Ships with a registered crew of 101 and less than 300 members shall be entitled to send two (2) delegates with one (1) vote each, or one (1) delegate with two (2) votes.

(Board's Exhibit No. 6—continued.)

(c) Ships with a registered crew of 301 and less than 600 members shall be entitled to send three (3) delegates with one (1) vote each, or one (1) delegate with three (3) votes.

(d) Ships with a registered crew of 601 and less than 1,000 members shall be entitled to send four (4) delegates with one (1) vote each or one (1) delegate with four (4) votes.

(e) Provided, however, that no man may be seated at the Convention as a delegate from a ship unless he was a member of the crew of that ship at the time he was elected, and provided further, that no delegate to the Convention from a ship shall be nominated and/or elected more than sixty (60) days prior to the opening of the Convention, and shall have in his possession for the inspection of the Credentials Committee a copy of the minutes of the Joint Ship's meeting at which he was so elected, and signed by the Ship's Committee; and provided further that the crew of the ship he is to represent shall pay his expenses and maintenance for the duration of the Convention.

Sec. 6—Delegates shall present to the Credentials Committee of the Convention their credentials signed by the Secretary of the Division of the Union, and also their Union books showing the payment of all dues and assessments.

Sec. 7—The Credentials Committee shall report its findings to the Convention and the Convention shall have the power to pass upon the qualifications

(Board's Exhibit No. 6—continued.)

and eligibility of delegates and their right to a seat in the Convention.

Sec. 8—Each Division at Headquarters shall mail a duplicate of the credentials of each delegate to the National Secretary at least two weeks prior to the holding of the Convention.

Sec. 9—The expenses of Delegates to the Convention shall be paid by the Division represented by them.

Sec. 10—The proceedings of the Convention shall be governed by this Constitution and Roberts Rules of Order (Revised) in instances where no specific provision is set forth, the rules adopted at the preceding Convention shall be in force from the opening of any Convention until new rules shall have been adopted by the Convention itself. Each Convention may adopt rules for the conduct of its business not in conflict with the provisions of this Section.

Sec. 11—A quorum for the transaction of business at a Convention shall consist of two-thirds of the Delegates accredited to the Convention.

Sec. 12—The following order of business shall prevail at each Convention unless suspended by a two-thirds ($2/3$) vote of the Delegates present and voting, a quorum being present:

- (1) Call to order by President.
- (2) Election and report of Credentials Committee.
- (3) Roll Call.

(Board's Exhibit No. 6—continued.)

(4) Report of the National officers.

(5) Election of the following committees: Press, Resolution, Law, Reports of officers and members of the National Council, hereinabove set forth in Article V entitled "Powers and Duties of the National Council."

(6) Appeals by Divisions or members of Divisions from decisions made by the National Council during the year immediately preceding the holding of the Convention, in any way interfering with the rights granted herein to Divisions and members of Divisions.

(7) Reports of Divisions.

(8) Reports of Committees.

(9) Unfinished Business.

(10) New Business.

(11) Election of Delegates to Convention of the Committee for Industrial Organization or other National organizations with which the National Maritime Union is affiliated.

(12) Good and Welfare.

(13) Adjournment.

Sec. 13—None other than members of bona fide Trade Unions or those identified with the Labor movement shall be permitted to address the Convention or to read papers therein, except by a two-thirds vote of the Delegates present and voting, a quorum being present.

(Board's Exhibit No. 6—continued.)

Qualifications of National Officers

Article X

Section 1—The National Officers shall consist of National President, National Vice-President, National Secretary-Treasurer, the District Officers of each District and the Secretary-Treasurer for each Division at headquarters.

Sec. 2—The District Officers of each District shall consist of the District Chairman, District Secretary and District Treasurer, provided that no more than one of the latter shall be elected from any one Division.

Sec. 3—Any member in good standing in the organization, who is a citizen of the United States or who has legally declared his intention of becoming a citizen of the United States, shall be eligible to hold office in the NMU of A, if employed in the shipping and marine transportation industry, or officially connected with the organization, and who has never been found guilty of misappropriating any trust funds and has been a member of the NMU of A, or of any other maritime organization from which the said member transferred for membership in the NMU of A, except as hereinafter provided.

Sec. 4—Members eligible for any National, District or Division office shall be members of the NMU in good standing for at least one year, unless nominees should belong to a Division that is affiliated with the NMU less than one year, in which

(Board's Exhibit No. 6—continued.)

event he shall have been a member of the Maritime Union from which he was transferred for one year.

Sec. 5—Any member in good standing in the organization for one year who is a citizen of the United States or who has legally filed his intention to become a citizen of the United States, shall be eligible to hold office in the NMU, provided:

(1) He shall show proof of three full years service in his division of the marine transportation industry.

(2) He shall not have been ashore for a longer time than the six months immediately preceding his nomination.

(3) That rule No. 2 shall not be applicable to members now holding office nor to any member who was an official of any other bona fide Maritime Union prior to becoming a member of the National Maritime Union, nor shall Rule No. 2 be applicable to any member who can show to the satisfaction of District Headquarters' joint meeting that he could not comply with Rule No. 2 due to Rank and File activities.

Nomination of National Officers, Division Branch
Agents and Joint Agents

Article XI

Section 1—(a) Biennially during the month of September at joint membership meetings held at headquarters and at branches there shall be nomi-

(Board's Exhibit No. 6—continued.)

nated candidates for all national offices. Each nominee, before his name shall be placed upon the ballot must first secure the written endorsement of 25 members in good standing.

(b) District officers, Branch Agents and Joint Branch Agents and Patrolmen shall be nominated yearly as provided in (a) above.

Sec. 2—All nominations must be recorded in the minutes of headquarters or branches where made, and the nominations properly endorsed, and the written acceptance of the nominee must be forwarded to the District Secretary by registered mail and must be in his hands not later than the 7th day of October.

Election of National Officers

Article XII

Section 1—Ballots shall be prepared by the National Secretary in the form prescribed by the National Council. These ballots shall be immediately forwarded to each District Committee and balloting shall take place in the manner hereinafter provided.

Sec. 2—During the second week in October at Headquarters and Branches in each District there shall be held joint meetings of all Divisions at which meetings one member from each Division should be elected to a Balloting Committee, to function in the port in which he was elected. This Committee shall meet at the District Committee or Branch

(Board's Exhibit No. 6—continued.)

offices immediately after their election, and it shall be the duty of this Balloting Committee to determine the eligibility of each nomination made and to prepare the ballots in conformity with rules as set forth by the National Council and one representative for each District Balloting Committee.

Sec. 3—Any member who is running for re-election shall have indicated alongside his name on the ballot the number of terms of office he has held.

Sec. 4—All ballots shall be forwarded to each Division and Branch maintained by each Division, as well as those ports that have joint agencies, in sufficient numbers to supply each member not later than two weeks prior to the date of the election.

Sec. 5—In addition to the candidates for various offices, the ballots may also contain any amendments to the Constitution or By-Laws that have been regularly offered, in accordance with Articles XXIII and XXV.

Sec. 6—During the election every member entitled to vote shall apply to the duly elected Balloting Committee for a ballot at headquarters and branches, whereupon he shall be given a ballot, and envelope numbered similarly to the ballot, and second envelope self-stamped and addressed to a safety box in a bank at District Headquarters previously provided. After marking the ballot to his own satisfaction he shall enclose his ballot in the first numbered envelope, then enclose this envelope in the second self-addressed envelope and then seal said

(Board's Exhibit No. 6—continued.)

second envelope and mail it in the nearest United States mail box.

Sec. 7—Each member, before he receives his ballot, shall sign his name and membership number in a bound book, kept for that purpose. If he is unable to write, he shall mark a cross in that book and his name and number may then be written by the officer in charge of the Division. After he has voted, his membership book shall be stamped to indicate that he has voted, giving the date and the place where the vote was cast.

Sec. 8—Ballots shall be secret and each ballot marked in ink.

Sec. 9—Within 24 hours after the balloting shall have been completed in each Branch the Balloting Committee shall immediately forward to the District Headquarters all ballots unused and voided, as well as a photostatic copy of the list of members who voted and signed the bound book kept at headquarters and each Branch.

Sec. 10—At the second meeting held in December or a special meeting held no later than the 24th of December of each year, at Division Headquarters there shall be elected three members for each Division to serve as Judges of Election.

Sec. 11—All members elected to act as Judges of Election shall meet no later than the 5th of February of the same year, and shall immediately proceed to the safe deposit vault and deliver the

(Board's Exhibit No. 6—continued.)

ballots to District Headquarters where they shall be counted by the Judges of Election.

Sec. 12—Balloting shall be conducted upon the premises occupied by each Division, except in the Ports where the Union maintains a joint agency, and in those ports on the premises occupied by the joint agency, except as hereafter provided.

Sec. 13—At District Headquarters the Judges of Election shall open the ballots, one at a time; count the number of ballots cast and see whether the number of ballots cast tally with the number of members who have voted as shown on the photostatic copies of voting lists forwarded from each port.

Sec. 14—The Judges of Election shall then count the number of ballots cast for each candidate whose name appears thereon, and also the number of ballots cast in favor of or against any amendment or proposition; count the unused ballots and announce the results of the votes cast for each, at the first meeting at headquarters held by each Division, and at the same time communicating the results of the election to the branches. Any candidate shall be permitted at all times to be present while ballots are being counted.

Sec. 15—Immediately after the Judges of Election have reported, they shall deliver to the National Secretary-Treasurer all of the ballots, photostatic copies of voting lists and any comment of Judges of Election, in the form of sealed packages. The National Secretary-Treasurer shall deposit the sealed

(Board's Exhibit No. 6—continued.)

packages in a safe deposit vault and keep them until the next general election, subject to a recount ordered by the Union. A recount shall be ordered when the membership joint meetings at Headquarters and Branches of at least two Districts adopt resolutions to that effect.

Election of Division Branch Agents and Joint Branch Agents

Article XIII

Section 1—Balloting for the election of District Officers, Division Branch Agents and Joint Branch Agents shall conform with the provisions for the election of National officers, except that they shall be held annually.

Sec. 2—Patrolmen to be nominated at the same time as regular officers and their names placed on a special port ballot provided for that purpose and the balloting to be conducted as provided for by the District elections. At the termination of the Balloting, the Balloting Committee of each port shall constitute the Judges for the election of Patrolmen, and to count the ballots cast and report to the membership for their ratification.

Duties of National Officers

Article XIV

President

Section 1—The President may preside over all National Conventions and meetings of the National

(Board's Exhibit No. 6—continued.)

Council and sign all bills and official documents after the National Secretary certifies their correctness.

Sec. 2—He may appoint a member of the Union, whose duty shall be to collect and compile statistics in any way affecting the shipping and marine transportation industry, and any other matter that may be of benefit to the organization. Said statistician upon employment must receive the endorsement of a majority of the members of the National Council.

Sec. 3—He may employ when so instructed by the National Council, such organizers and field workers as may be necessary to conduct the affairs of the National Maritime Union of America, such employment must be endorsed by the National Council subject to ratification by membership meetings at Headquarters and Branches of at least two Districts.

Sec. 4—He may visit in person any District office, or Branch of any District, if, in his judgment, such visit will be of benefit to the National Maritime Union of America.

Sec. 5—He shall employ, subject to the approval of the National Council, one or more competent traveling auditors who must be certified public accountants.

Sec. 6—He shall devote all his time to the affairs of the organization, executing the instructions of the National Council and exercising general super-

(Board's Exhibit No. 6—continued.)

vision over the office work of the National Maritime Union of America.

Vice-President

Sec. 7—The Vice-President shall assist the President in the performance of duties vested by this Constitution in the President, whenever in the opinion of a majority of the National Council, the President is unable to adequately and properly perform his duties, whether by reason of illness, absence from the National office or otherwise; and in the event the presidency is vacated by resignation, or death, or removal from office, he shall succeed to the position. He shall also perform any duties assigned to him by the National Council.

Secretary-Treasurer

Sec. 8—The Secretary-Treasurer shall have charge of and preserve all books, documents and effects of the National Office. The seal shall remain in the form and design heretofore used, or which may hereafter be adopted, which shall be retained by the Secretary-Treasurer in trust for the use of the membership in their organization affairs; and he shall prosecute any and all proceedings proper to prevent the wrongful use or the imitation of the seal or the name of the organization.

Sec. 9—He shall record or cause to be recorded the proceedings of all National Conventions, as well as of meetings of the National Council, and shall

(Board's Exhibit No. 6—continued.)

immediately after the adjournment of the Convention, or the adjournment of any regular or special meeting of the National Council, forward an accurate copy of all of the minutes and resolutions adopted by the convention and the National Council to each District Headquarters and Branches.

Sec. 10—He shall receive and receipt for all monies due the National Maritime Union of America, pay all bills and current expenses if less than \$500 in amount; all other bills to be paid when ordered by the National Council. He shall keep copies of all correspondence sent out and received by his office.

Sec. 11—He shall submit at each quarter-annual meeting of the National Council, a statement showing the salary and expenses of each officer and employee and also detail the receipts and disbursements of all monies by the National office. The receipts from each District shall be compiled separately and totaled. Copies of all statements and reports submitted to the meetings of the National Council shall be forwarded to each District, Headquarters and Branches.

Sec. 12—He shall order and keep in his possession all check books; see that they are consecutively numbered and in proper form, and issue all checks as they are required, taking a receipt for the same; he shall keep on hand a sum not exceeding \$1,000 for the purpose of paying such warrants and orders as are properly ordered in accordance with the pro-

(Board's Exhibit No. 6—continued.)

visions of this Constitution; he shall deposit in such bank or banks as the National Council may from time to time designate, any and all sums above the amount mentioned; he shall pay all warrants and orders properly authorized in accordance with the provisions of this Constitution; he shall keep the bank books in his possession, and shall produce the same as well as the cash on hand at all regular or special meetings of the National Council for the inspection of the members; he shall be present at all regular meetings of the Council; he shall prepare at the end of each month a full report of all monies received; put in bank and paid out on warrants and orders. He shall receive and keep on file copies of all minutes and financial reports issued by him; he shall file satisfactory bonds in the amount of \$10,000 or any larger sum as may at any time be ordered by the National Council; when authorized by a two-thirds vote of the National Council; he shall retain the service of as many auditors or accountants as shall be necessary to audit the books and accounts maintained at the National office or any District office.

Sec. 13—The President, Vice-President, and Secretary-Treasurer shall prepare a joint report which shall be signed by each and rendered to the regular National Convention.

Sec. 14—The President, Vice-President and Secretary-Treasurer shall have their report prepared,

(Board's Exhibit No. 6—continued.)

printed and ready for distribution on the first day the Convention convenes.

Salaries of Officers

Article XV

Section 1—President, \$75.00 per week; Vice-President, \$65.00 per week; Secretary-Treasurer, \$75.00 per week. These salaries shall be subject to increase at the discretion of the membership, and this shall apply to all salaries of all officers.

Editor of Official Journal: Wages to be set by the National Council subject to the ratification of the membership.

Delegates to the C.I.O. or any other Convention when employed, \$6.00 per day.

Sec. 2—Each of the above mentioned officers delegates and editors shall receive in addition to their salaries, all actual railroad fares and subsistence at the rate of \$5.00 per day, when employed by the National Maritime Union of America away from their places of residence.

Sec. 3—During all general strike periods called by the membership of the NMU, the salaries of all officers automatically shall cease to be paid until the period of the general strike is over.

Sec. 4—The National Council shall fix the salary of the Washington legislative representative subject to the approval of the membership.

Sec. 5—All officials of the NMU shall be given two weeks vacation with pay yearly providing that

(Board's Exhibit No. 6—continued.)

no two National, District or Branch officials shall be absent at the same time.

Duties of District Officers

Article XVI

Chairman

Section 1—It shall be the duty of the Chairman to preside over the meetings of the District Committee and enforce due observance on the part of all members in the District of the Constitution and By-Laws. He shall, in case of a tie, give the deciding vote. He shall sign the Secretary's financial report to certify that it has been approved by the meeting of the District Committee. He shall call special meetings of the District Committee, when requested in writing by two members of the District Committee, no more than one of whom shall be members of any one Division. He shall attend at least one meeting of each Division during each month and make such recommendations to the District Committee, which, to him, may seem proper for the better conduct of the affairs of the Union or of any Division thereof.

Secretary

Sec. 2—The District Secretary shall keep an accurate record of all regular and special meetings. He shall keep a correct list of members, for the District Committee and the Division affiliated with

(Board's Exhibit No. 6—continued.)

the District, as well as for Headquarters and the various Branches. He shall receive and record weekly reports from Division Secretaries and branches and immediately bring to the attention of the District Committee any default on the part of any Division Secretary or Branch Agents for action by the District Committee. He shall prepare and present for the consideration of the District Committee all forms to be used by the Union, the Divisions and Branches thereof, and to record all financial transactions of such Divisions and Branches. He shall maintain at all times a complete record of special and regular minutes of meetings of the District Committee, Divisions, National Council and all Branches.

Sec. 3—He shall, subject to the approval of the District Committee, employ such clerical staff as may become necessary to properly maintain the records of the District Committee. The District Committee office shall be kept open every day during the week, except Saturdays after 1:00 P. M., Sundays and Holidays observed by the Union, and all of the records shall be made available for the inspection of any member of the District.

Sec. 4—He shall once a week, or any time required by the Treasurer, pay over to the said Treasurer all monies on hand exceeding three hundred dollars (\$300.) which amount he shall keep on hand for the purpose of defraying such running expenses as may be incurred in the office. He shall submit

(Board's Exhibit No. 6—continued.)

his books for the inspection of the Treasurer once a week, or at any time the Treasurer demands it. He shall receive each month a report from the Treasurer, and shall verify the same by looking over the report from the Treasurer's books. He shall enter said report properly on the books, and keep said report on file. He shall prepare weekly and quarterly balance sheets, and send copies of same and also the records of each meeting, to all the Branches and the Treasurer. He shall issue notices of special meetings when he is notified in writing by three members of District Committee that a special meeting is demanded. He shall bring before the regular or special meetings such complaints as may have been made by members during the intervening regular meetings, and also give a report of the general situation at each regular meeting. He shall keep the seal of the Union, affecting his District, in his possession, and shall attend to all correspondence retaining copies of all letters written by him as Secretary. He shall attend to other office work not here enumerated, and to such other duties as the District Committee from time to time designates. He shall represent the Union on all occasions where representation is required and not otherwise provided for in the Constitution. He shall be the executive officer and shall file satisfactory bonds of not less than \$10,000 to be furnished by a reliable surety company, premium on which bonds to be paid for by the District Committee.

(Board's Exhibit No. 6—continued.)

Treasurer

Sec. 5—The District Treasurer shall receive and receipt for all funds given him by the Secretary. He shall keep on hand a sum not exceeding \$300 and deposit all other sums in a bank or banks to be designated by the District Committee. He shall deposit in such bank or banks all monies above the aforesaid limit. He shall pay all bills immediately upon being authorized by the District Committee. He shall keep the bank book in his possession and shall produce the same as well as cash on hand when called upon to do so. He shall once a month furnish the Secretary a full report of all monies received, put in bank and paid out on orders. He shall look over the Secretary's books to satisfy himself that all money received is turned over to him. He shall further submit his own books for the inspection of the Secretary. He shall receive and keep on file copies of all minutes and financial reports issued by the Secretary. He shall file satisfactory bonds of not less than \$10,000 to be furnished by a reliable surety company, premium on which bonds to be paid for by the District Committee.

Division Secretary-Treasurer at Headquarters

Sec. 6—The Division Secretary-Treasurer shall be the Executive officer of the Division and shall be present at each meeting of the Division. He shall present a weekly report and read any and all communications addressed to the Division by either the

(Board's Exhibit No. 6—continued.)

National Officers, National Council, District Officers or District Committees. He shall keep an accurate record of all regular and special meetings. He shall keep a correct list of members in his Division. He shall receive all fees and dues from members, either directly or through patrolmen, as collected on their boats. For all money thus received he shall give proper receipts. He shall keep on hand and distribute receipt books to agents and patrolmen as required. He shall, once a week, or at any other time required by the District Treasurer, pay over to the District Secretary 50% of all monies collected by him, directly or indirectly, and out of the balance shall pay his salary and the salary of any patrolmen and necessary clerical help. He shall fill out any and all forms sent to him by the District Secretary and shall supplement these reports insofar as they fail to furnish a complete record of all transactions, and he shall forward copies, of the same to the District Secretary each week. He shall enter said reports properly on the books and keep same on file. He shall prepare weekly balance sheets and send copies of same and also the records of all meetings to the District Secretary and attend to all correspondence, making copies of all letters written by him as Division Secretary-Treasurer. He shall perform any other duties affecting his division and which are assigned to him by the District Committee.

(Board's Exhibit No. 6—continued.)

Division Branch Agents

Sec. 7—Each Branch Agent shall be the executive officer of the Division of the Union in his respective locality. He shall keep a record of the proceedings of all regular and special meetings of the branch, and shall forward copies thereof to the District Committee. He shall be empowered to receive money due the Union from members and initiation fees from applicants for membership, either directly or through any patrolman elected by the Division membership in that branch. He shall prepare weekly financial reports showing in detail the income and expense and forward copies thereof to headquarters, together with duplicates of receipts for income and original vouchers for expenditures. He shall at the end of each week remit to the District Secretary any money on hand in excess of \$100 after the current expenses for the week have been met. Any failure to comply with the two foregoing provisions or to furnish a satisfactory explanation to the District Committee may be considered equivalent to a resignation. He shall at all times conform to the rules governing the financial affairs of the Union prescribed in this Constitution. He shall furnish a surety bond in the sum of \$500, the premium to be paid for by the Union. He shall fill all orders for crews in conformity with regulations prescribed by the branches. All branches shall at all times with the assistance of the District Committee adopt rules affecting the branches.

(Board's Exhibit No. 6—continued.)

Section 8—All obligations and duties set forth in the Section immediately preceding shall be performed by each branch agent, except that the joint agent shall prepare separate reports for each Division and shall forward each report to the Secretary of the District Committee.

Sec. 9—For the next three years all nominees for official positions shall have clear strike records.

Salaries

Sec. 10—The salaries of the respective officers shall be as follows:

District Chairman	\$60 per week
District Secretary	\$60 per week
District Treasurer	\$60 per week
Division Secretary-Treasurer	\$60 per week
Patrolmen	\$40 and \$5 for expenses
Division Branch Agents.....	\$50 and \$5 for expenses
Joint Branch Agents.....	\$50 and \$5 for expenses

Sec. 11—Each of the above mentioned officers excepting the Patrolmen and Branch Agents shall be paid their actual travel expenses and \$5 per day when away from their respective headquarters.

Rights, Powers, Obligations, Duties and Benefits of the Membership

Article XVII

Section 1—Candidates for membership shall be all workers now engaged in the shipping and marine

(Board's Exhibit No. 6—continued.)

transportation industry or intending to be employed in the shipping and marine transportation industry, subject to rules and regulations of the NMU.

Sec. 2—All candidates for membership shall make application for membership in accordance with the form provided by the National Council and/or the respective District Committees, and the District Committees shall have power to refuse admission to any candidate provided that no person shall be excluded from membership by reason of race, color, religious belief, sex and/or political affiliation.

Sec. 2—(a) All candidates must appear before a membership committee and a book issued to him or her, if he or she meets the condition for admission previously promulgated. Requirements at all times to be agreed upon by the membership.

Obligations of Membership

Sec. 3—Initiation Fee, Membership Dues and Exemption of Dues: (a) The initiation fee for membership in the National Maritime Union of America to be paid by persons seeking membership shall not be less than \$10, except as hereinafter provided.

(b) Each member shall pay as dues \$1.00 per month.

(c) Any member more than three months in arrears in the payment of dues shall be ineligible to vote at any meetings which he may attend, and shall be suspended as a member if in arrears for more than six months. Members who are in good

(Board's Exhibit No. 6—continued.)

standing at the time of the vessel's departure from the last port where an office of the Union is located shall be deemed in good standing until the end of the voyage upon which they were originally engaged, or until return to a port within the jurisdiction of the Union, whichever first happens.

(d) Members shall be exempt from the payment of dues in case of sickness or unemployment, upon presenting ample evidence that sickness or unemployment prevented him from paying his dues. However, upon regaining employment, he must pay all back dues.

Sec. 4—Each member, in addition to the initiation fee and the monthly dues shall be subject to a yearly assessment of no more than \$10 to meet all of the obligations of the Union for the benefits enumerated in Article XVIII as well as any strike needs, provided, however, that \$1 yearly be allocated to the support of the Pilot.

Probationary Members

Sec. 5—Members upon joining the Union shall receive membership books and shall be considered probationary members for a period of six months, at which time they shall be admitted to full membership. Probationary members, however, shall have voice but no vote.

Sec. 6—A full member in good standing shall be one in the Union more than six months and not in arrears in the payment of dues or assessments for more than three months.

(Board's Exhibit No. 6—continued.)

Eligibility to Vote

Sec. 7—Every full member in good standing during the balloting at annual or biennial elections shall be qualified to cast a ballot.

Membership Books

Sec. 8—(a) The membership book shall at all times remain the property of the National Maritime Union of America.

(b) Any member losing a membership book, other than by shipwreck or fire, shall, upon payment of fifty (50) cents, have issued to him a new membership book.

(c) Any probationary or full member shall, on demand, by an official or duly elected representative of the Union, produce his book of membership in the Union.

Exchange of Membership

Sec. 9—Any member of any other bona fide union whose membership is now engaged, directly or indirectly, in the shipping and marine transportation industry, may exchange his membership book for that of a membership book of the National Maritime Union of America, provided he is a fully paid up member of his Union. However, should any book presented for such exchange indicate that the member was in arrears in the payment of his dues, then, before the issuance of a membership book of the

(Board's Exhibit No. 6—continued.)

National Maritime Union of America, the said member shall agree to pay to the NMU of A an assessment in an amount equal to his arrears in the Union from which he seeks to be transferred.

Sec. 10—Every member who is three months or more in arrears in his dues and assessments to the Union shall not be entitled to any benefit or take part in, nor vote in any business of the Union until after he has cleared up his book. Every member who is six months in arrears shall be struck off the list of members unless the reason for failing to pay satisfies the District Committee that his failure was unavoidable.

Duties of Members

Sec. 11—(a) It shall be the duty of each member to be true and loyal to the union and the labor cause, and to endeavor to put into practice the principles laid down in the preamble; and they shall yield strict obedience to such rules as the Union may see fit to adopt.

(b) It shall be the further duty of every member to uphold and advocate the objects of bona fide labor organizations, and to buy only Union-made goods where such are obtainable.

(c) It shall be the duty of every member to attend special and general meetings provided for in this Constitution, and when at sea, to attend all meetings called by ships' committees.

(Board's Exhibit No. 6—continued.)

(d) Every member shall be deemed to possess a copy of these rules, and ignorance of the rules on the part of any member shall not be set up as an excuse for breach of any rule. Every member shall be subject to such fines and penalties as shall be hereinafter set forth, for the breach of any of these rules.

Retirement from Membership

Section 12 (a)—Members working in another industry for a period of more than three months or intending to abandon the shipping or marine transportation industry shall retire from active membership in the Union and shall be granted a retiring card upon payment of all back dues, assessments and fines or other indebtedness to the Union, including dues for the current month; provided further that he shall not retain membership in one division while working in another.

(b) Members holding retirement cards shall surrender all rights and privileges of membership during the period of retirement, but shall be restored to active membership by depositing their retirement cards and making payment as hereinafter provided.

(c) Members who have been retired for a period of six months or longer shall be restored to good standing upon the payment of dues for the current month during which they seek reinstatement.

(Board's Exhibit No. 6—continued.)

Benefits of Membership

Article XVIII.

Section 1—Every probationary and full member of this Union shall be entitled to the following benefits:

(a) Shipping Benefits: All shipping done through the Union hall shall be on a rotary shipping system and no member of the Union shall be disqualified from shipping benefits; the said rotary shipping rules to be formulated by each District.

(b) Funeral Allowance: In the event of the death of a member, his nearest relative or any person duly designated by him in the manner provided shall receive the sum of \$125.00, provided that the deceased member was not in arrears with his dues and assessments as previously set forth, and that he had been a member of the Union for one year.

(c) Shipwreck Benefits: If a member is shipwrecked or loses his clothes by fire or other disaster on board ship, and can submit proof of the same to the District Committee, and is not in arrears with his dues and assessments, as previously set forth, at the time of the shipwreck or loss of clothes, he shall be entitled to a shipwreck benefit not exceeding \$100.

(d) Hospital Benefits: Every member in good standing shall be entitled to \$1.00 per week, (1) while a patient in any U. S. Marine Hospital and

(Board's Exhibit No. 6—continued.)

(2) while a patient in any institution for the sick.

(e) Prison Benefits: Any member of the Union who shall serve a prison sentence arising out of any Union activity shall be paid not more and not less than \$5.00 each week.

General Strike

Article XIX.

Section 1—The National Council shall have power, between conventions, by a two-thirds (2/3) vote, to recommend the calling of a general strike, but under no circumstances shall it call such a strike until approved by a referendum vote of the membership, except in the instances of strikes specifically hereinafter provided.

Sec. 2—The National Council shall, in the form of a resolution, set forth the purpose of the Union in declaring a strike, stating the date upon which the strike shall be called, and such other particulars as may be necessary for the full information of the membership.

Sec. 3—A referendum vote on strike resolutions shall be held as provided in Article XXIII of this Constitution, except that period for conducting such a referendum shall be no more than one month.

Sec. 4—If a general strike is called by a National Federation or Association with which the National Maritime Union of America shall become affiliated, a strike call may be recommended in the

(Board's Exhibit No. 6—continued.)

form of a resolution by a two-thirds ($2/3$) vote of the National Council. This resolution must be endorsed by special meetings called for that purpose by a majority of the Districts, and the results of said meetings wired to the National Council.

Sec. 5—A strike involving the failure of a master of a vessel to comply with rules and regulations previously agreed to with the officers of the Company owning or operating the vessel, may be called by a Branch agent, provided however, that such strike call is approved by a special joint membership meeting called at the Branch.

Sec. 6—When any difficulty affecting the membership of the Union in any branch arises, the agent or agents of the branch involved shall call a special joint meeting, and such meeting shall have the power to adopt such temporary strike measures as the circumstances shall require. Such rules, however, shall only affect the branch in question, and shall give way to any rule that may be adopted by the District Committee on any of the questions that are involved in the branch in question.

Sec. 7—No less than ten per cent of all monies collected by the District Committee shall be deposited every month in a special fund to be designated as "District Strike Fund," and to be withdrawn only in the event of a strike being called in the District, and affecting the entire District. This fund shall be subject to the withdrawal upon the signa-

(Board's Exhibit No. 6—continued.)

ture of three District officers and shall be used only for such District strike purposes.

Sec. 8—In the event that a nation-wide strike is called, all strike committees elected in each District shall forward proposals to the National Council affecting the general management of the strike. The National Council shall co-ordinate all rules and regulations for the conduct of the strike and each District shall contribute such sums from its strike fund as the National Council shall direct.

Sec. 9—Immediately upon the adoption of a resolution calling a strike, either involving a District or all members of the Union, joint membership meetings shall be held at Headquarters maintained by each District. A Strike Committee, consisting of no less than 18 members shall be elected in each District. The joint membership meetings at Headquarters shall elect from among the members present 15 members of the Committee, and the National Council from among its members shall elect three members, provided, however, that each Division shall be represented by at least one member on the Committee.

Sec. 10—Each Branch, immediately upon the declaration of a District- or nation-wide strike, shall call special meetings for the purpose of electing strike committees for each branch.

Sec. 11—Each Branch shall elect a committee of not less than five, provided, however, that each Divi-

(Board's Exhibit No. 6—continued.)

sion is represented on the Strike Committee. Branch Strike Committees, however, must at all times be guided by the general policy adopted by the Strike Committees elected at District Headquarters.

Sec. 12—Each Strike Committee elected at Branches and Headquarters shall make weekly financial reports and also forward the minutes of all membership meetings called by the Branch or Headquarters District Committee to the National Council.

Sec. 13—Before a strike shall be declared off, special joint meetings shall be called simultaneously in all divisions at headquarters and all Branches affected by the strike, for that purpose, and it shall require a majority vote of all members present to decide the question either way.

Suspension, Recall and Vacancies

Article XX.

Section 1—The following National officers, to wit, the National President, National Vice-President, and National Secretary-Treasurer, or any other National officers that may at any time be provided, shall be suspended by the National Council when the District Committees of two Districts, by a majority vote taken within a period of one month, recommend such suspension to the National Council.

Sec. 2—Upon receipt of such recommendation from two Districts, the National Council shall, within no more than two weeks thereafter, order the holding of joint membership meetings at Head-

(Board's Exhibit No. 6—continued.)

quarters of each District. At these joint District meetings, the formal charges upon which the complaining Districts base their suspension shall be read and at these District meetings a Trial Committee of six shall be elected which shall be presided over by a member of the National Council, designated by the Council.

Sec. 3—The District Committee shall thereafter at the end of two weeks call other special meetings at which time the Trial Committee will report and submit their findings for approval or rejection. If the charges are sustained by a majority vote at Headquarters and Branches of at least two of the Districts, the officers on charges shall stand suspended. If the charges are rejected, the suspended officer shall be restored to his office and all salaries withheld during the period of suspension shall be paid to him.

Sec. 4—Any National President, National Vice-President or National Secretary-Treasurer who shall have been suspended as provided above may appeal to the next National Convention.

Sec. 5—If a vacancy is created by this suspension, it shall be filled by a referendum vote provided for in Article XII. In the meantime, the duties formerly performed by the suspended officer shall be performed by any member of the District Committee whom the National Council shall designate.

(Board's Exhibit No. 6—continued.)

Sec. 6—Any District officer may be suspended upon a resolution adopted by any joint membership meeting held at the Headquarters of its District. Any Branch Agent may be suspended by any joint meeting held in any Branch maintained by the Union. All members in good standing shall be eligible to vote at these meetings. The quorum for the suspension of a District officer at Headquarters shall be 100, and the quorum for the suspension of a Branch Agent shall be 50.

Sec. 7—The Division demanding the suspension of a District officer shall present formal written charges upon which it bases its demand for such suspension. At the meeting immediately following the suspension of a District officer, a special joint meeting of all Divisions shall be called at Headquarters at which meeting the charges will be read; a trial committee of five shall be elected. This committee shall meet during the week immediately following the special meeting to hear any and all members or other persons who desire to be heard upon the charges preferred against the District officer. Another special joint meeting shall be called two weeks after the officer has been suspended, at which meeting the Trial Committee shall report, and if the report of the Trial Committee is adopted by a majority vote of the full members in good standing, the officer shall stand suspended. If the report of the Trial Committee recommending suspension is adopted the joint meeting shall imme-

(Board's Exhibit No. 6—continued.)

diately nominate members to fill the vacancy. The report of the Trial Committee shall be sent to all Branches, and in a special meeting called for that purpose shall also nominate members to fill the vacancy. The Branches shall forward to the district Committee all names of nominees. The District Committee shall compile the list of nominees and forward same to the Branches. At the next succeeding meeting a secret ballot shall be cast at headquarters and branches. The result of this ballot shall be forwarded to the District Committee. The man receiving the highest number of votes shall be declared elected.

Sec. 8—All vacancies occurring by death, recall, resignation or retirement between elections shall be filled as provided in Section 7 above.

Section 9—The Division Secretary-Treasurer shall be suspended upon the presentation of formal charges to any regular meeting of the Division at Headquarters, at which a quorum shall consist of 100 members. Formal written charges shall be filed with the Chairman of this meeting. At the first regular meeting after the formal charges are filed, the charges shall be read, and a trial committee immediately elected by the membership at the meeting. The Trial Committee of five shall announce at the meeting the time and place where they will hear persons who desire to be heard upon the charges filed. At the next succeeding regular meeting the Trial Committee shall report, and the membership

(Board's Exhibit No. 6—continued.)

shall either adopt or reject the report of the Trial Committee. If the recommendation that the member remain suspended is adopted, then the vacancy shall be filled as provided in Section 7 above.

Sec. 10—Branch Agents, whether they be Division Branch Agents or Joint Branch Agents, shall be suspended by membership meetings at Branches in the same manner in which the Division Secretary-Treasurer shall be tried and suspended. A quorum at such meetings shall consist of 50 members.

Trials

Article XXI.

Section 1—Any charge of violating the laws and rules of the Union made against any member must be submitted in writing to a regular meeting. Thereupon a Trial Committee of five full members shall be elected to which said charges shall be referred without discussion. Such committee shall be elected in a port most convenient to both accused and accuser and witnesses. If the offense against the Union and its principles and policies takes place in the meeting, the meeting may go into the Committee of the Whole and try the member at once, and in this case the findings and recommendations from the Committee of the Whole shall be acted upon as if the report were made by a duly elected Trial Committee.

Sec. 2—If the accused member is not present when charges are made notice of such charges shall

(Board's Exhibit No. 6—continued.)

be posted on the blackboard at Headquarters or the Branches; also the time and place of the trial. The accused member, if he so desires, must be given a copy of the charges in order to enable him to prepare his defense.

Sec. 3—The Trial Committee shall proceed with the trial of the accused after due notice and without unnecessary delay. In case the accused member refuses or neglects to appear, the trial shall proceed as if he were present. It shall be the duty of every member who has been cited as a witness to appear and testify before the Trial Committee.

Sec. 4—A majority of the Trial Committee shall constitute a quorum, and it shall render its findings and judgment in writing to the meeting; such findings and judgment shall be final, unless changed or rejected by the meeting at the Headquarters or Branch to which the report is made.

Appeals

Article XXII.

Officers

Section 1—Any District Officer, Division Secretary-Treasurer or Branch or Joint Agent who shall have been suspended in the manner hereinbefore provided, may appeal to the National Council and shall be reinstated if the National Council by a majority vote, decides that the suspension was unwarranted or in violation of the rules providing for

(Board's Exhibit No. 6—continued.)

such suspension, provided, however, that the reinstatement is ratified by joint meetings of the membership at headquarters or branches affected.

Members

Sec. 2—If a member is suspended, he may appeal to the District Committee. If the District Committee vacates the suspension order, the member shall not be reinstated until the order of the District Committee for reinstatement is ratified by membership meetings at Headquarters and Branches.

General Referendum Votes

Article XXIII.

Section 1—General referendum votes shall be conducted in the same manner that general elections are conducted, except that the time for holding a general vote shall be determined by the National Council, provided the resolution ordering the general votes shall specify the time when a general vote shall be conducted. The National Council shall carry out all the provisions of the resolutions.

Organization on Board Ships

Article XXIV.

Section 1—Every ship carrying a registered crew of more than 100 shall on the second day out of the port or when practicable, call a meeting of all the unlicensed personnel and shall immediately elect a

(Board's Exhibit No. 6—continued.)

committee of six members, two from each Division, which committee shall elect its own chairman.

Sec. 2—It shall be the duty of the chairman of each committee to hold two meetings during each trip, once on the outward bound voyage, and the other on the homeward bound voyage, or such other meetings as the crew may deem necessary.

Sec. 3—The chairman shall see to it that minutes of the meetings are kept and that all tentative resolutions and questions raised at each meeting are contained in the written minutes, and shall forward the minutes to the District Secretary by registered mail.

Sec. 4—The chairman of the ship's committee shall call any special meeting other than those provided for herein, to consider and decide upon any questions affecting any member of any Division. In the event that a dispute arises on board any vessel which dispute is not specifically provided for by agreements in effect between the operator or owner of the vessel and the Union, no action is to be taken by the ship's crew until it arrives in a Port where the Union maintains an office.

Sec. 5—Whenever a vessel is away from its home port, the ship's committee shall be responsible to the National Maritime Union of America for the conduct of the ship's crew, and shall act as a Trial Committee and try any member of the crew whose conduct shall injure the prestige of the Union. The findings of the trial committee shall be presented

(Board's Exhibit No. 6—continued.)

to a general meeting of the ship's crew; if approved by a two-thirds ($2/3$) vote the decision of the ship's committee shall be final unless reversed by a decision of a joint membership meeting held at Headquarters or the Branch where the charges are filed. No member shall be considered exempt from the above rules by reason of his election to the ship's committee.

Sec. 6—The ship's committee shall supervise all elections on board ships in accordance with instructions issued by the National Council.

Sec. 7—All ships having crews of less than 100 shall elect a committee of three delegates who shall have the same powers and same duties and obligations as recited in the Sections 1 to 6. But this clause shall not apply to the Trial Committee. The Trial Committee must have a minimum of five men.

Manner of Amendments

Article XXV

Section 1—This Constitution may be amended in the following manner: Any proposed amendment may be submitted by any member at any regular branch or Division meetings. When submitted, the amendment must be spread in full in the minutes of the meeting and a copy forwarded immediately to the National Secretary at the National Council offices.

Sec. 2—Immediately upon receipt of any proposed amendment, the National Secretary shall

(Board's Exhibit No. 6—continued.)

transmit the proposed amendment to each District Committee. The District Committee shall submit the proposed amendment to the next regular meeting at headquarters and branches in each District. If the amendment is adopted at two successive membership meetings by a majority of the branches and Headquarters of all Districts, it shall be declared adopted.

Sec. 3—This constitution may be amended by a $\frac{2}{3}$ vote of the delegates convened in any National Convention, provided, that any amendment proposed by a Convention must be ratified by a referendum vote.

Meetings

Article XXVI

Section 1—Joint meetings shall be held at Headquarters and Branches at least once a month. Joint meetings shall be called in any one of the following manners:

(a) Upon the request of the National Council in the form of a resolution stating the purpose of the joint meeting.

(b) Upon request of the District Committee in the form of a resolution stating the purpose of the joint meeting.

(c) Upon a resolution adopted by any two division meetings at headquarters or branches.

(d) Upon a petition signed by 50 members at headquarters stating the purpose of the joint meeting.

(e) In Branches where a joint agent is maintained, a joint meeting may be called with a petition signed by 25 members in good standing, stating the purpose of the joint meeting.

Sec. 2—When requested, a joint meeting shall be called not later than twenty-four hours after receipt of such notice or petition.

Sec. 3—A quorum of joint meetings held at headquarters shall be one hundred and fifty (150) full members in good standing. A quorum of joint meetings held in branches where the Union maintains separate Divisions shall be seventy-five (75) full members in good standing. A quorum of joint meetings in all other branches shall be forty (40) full members in good standing.

The Granting of Charters

Article XXVII

Section 1—Charters may be issued to any group of workers engaged in the shipping or marine transportation industry in the following manner:

(a) All applications for the issuance of a charter shall be filed with the National Council.

(b) If the application for affiliation is filed within six months prior to the biennial Convention, the Convention delegates shall have the authority to issue such a charter to the applicant upon conditions to be determined by the Convention; or

(c) Should any such group of workers apply for affiliation at any other time, the National Council

(Board's Exhibit No. 6—continued.)

by a two-thirds vote may adopt a resolution prescribing the terms and conditions under which a charter may be issued to the applicants. However, the charter shall not be issued until the resolution proposed by the National Council is adopted by a two-thirds majority vote of the joint membership meetings held in the Districts.

Oath to Be Administered to Each Applicant

Article XXVIII

Section 1—At the first membership meeting immediately following the probationary period, a probationary member, before becoming a full member in good standing shall have the following oath administered to him by either the Division Branch Secretary, Division Branch Agent or Joint Agent:

“I,, hereby do subscribe to the principles contained in (1) the Preamble (Secretary to read Preamble) and (2) the articles cited in Article II (Secretary to read objectives) and shall do all in my power to further those objectives in order that the prestige of the National Maritime Union shall be enhanced.”

Order of Business of Division Meetings or Joint Meetings

Article XXIX

1. Call to order by Division Secretary-Treasurer, Branch Agent or Joint Agent.

(Board's Exhibit No. 6—continued.)

2. Election of Chairman.
- (a) Election of Recording Secretary.
3. Reading of minutes of previous meeting.
4. Financial and general report of Secretary-Treasurer, Division Branch Agent or Joint Agent.
5. Reading of minutes of preceding District Committee meetings or National Council meetings.
6. Presentation of Bills.
7. Election of Auditing Committee.
8. Patrolmen's reports.
9. Communications and action thereon.
10. Initiation of New Members.
11. Auditing Committee's Report.
12. Special Committee's Reports.
13. Unfinished Business.
14. New Business.
15. Good and Welfare.
16. Adjournment.

Rules of Order

All meetings shall be conducted pursuant to Robert's Rules of Order, Revised 1915 Edition.

BOARD'S EXHIBIT No. 7

Oil Tanker Supplement

* Atlantic * Gulf * Great Lakes *

N. M. U. of A.

The Pilot

Keep Our Union on a True Course

Official Organ of the National Maritime
Union of America

Vol. III—No. 4

New York City, February 3, 1938

East, West, Gulf, Lakes, Inland Boatmen:
On to a National Federation!A Program for All Seamen Sailing on All Vessels
Operated by the Oil Companies

By Jack Lawrenson

(Member, Negotiations Committee,
Member, District Committee)

The District Committee and the Negotiations Committee extend to you warmest fraternal greetings.

This week the National Maritime Union made the greatest advance in its history. On January 13 the agreement for the Tanker Companies was completed and on January 14 the Standard Oil Co. of N. J. signed this agreement at their offices, 30 Rockefeller Plaza, New York. Moe Byne of the Engine Division, Gethyn Lyons of the Stewards

(Board's Exhibit No. 7—continued)

division, and Joe Curran of the Deck division, signed for the Union.

The agreement is designed to cover the whole oil industry operating tankers on the Atlantic and Gulf Coasts. This supplement in which the agreement is presented in full will be printed in tens of thousands of copies and will be distributed on all the tankers in all ports during this coming week. There will be allowed a three-week period in order to enable the tanker crews to review the agreement. Following the three-week period, a secret referendum ballot will then be conducted as to whether you accept or reject the agreement.

At the close of the negotiations with the Tanker Companies, the Negotiations Committee pledged to do all in its power to prevent untoward actions on the part of tanker crews during the period of balloting on the agreement. The Negotiations Committee now asks you to help us carry out this pledge. We ask that all your disputes, prior to the agreement going into effect, be taken up with your shore officials and an attempt be made to settle them amicably without drastic action.

As to the agreement itself: The agreement marks, in many ways, definite advances for the seamen. These advances are as follows:

1. Three weeks annual vacation with full pay for the unlicensed personnel, with the option of ten days every **six months**.

(Board's Exhibit No. 7—continued)

2. \$5.00 increase in monthly wages, representing a total increase for the industry of nearly \$1,000,000.00 in cash in the pockets of the seamen.

3. Improved living conditions and vastly improved working conditions on all the companies signatory to the agreement.

4. Preferential employment for members of the National Maritime Union at all times.

5. Seventy-five cents per hour for overtime.

6. An arbitration provision which provides for the peaceful, just and speedy settlement of all disputes that may arise in connection with the agreement.

7. Agreement goes into effect April 1, 1938, and expires April 1, 1939, thus bringing a large section of our agreements up close to the summer months.

Some of the weaknesses of the agreement are: The fact that we did not procure the 100% closed shop and possibly a greater monthly increase in pay. But it must be pointed out here that, given a year under this agreement, these additional benefits will surely come.

We feel that this is a frank and honest presentation of the vital factors in the agreement. We wish to point out that this agreement was secured when, in other industries, tens of thousands of men are being laid off and wages are being cut. A year of peaceful relations with the oil industry will do much to help our Union consolidate and strengthen its position in the Maritime Industry.

(Board's Exhibit No. 7—continued)

Herewith, then, is the agreement submitted for your approval.

This Agreement, made this 14th day of January, 1938, by and between the Standard Oil Company of New Jersey, a corporation organized under the laws of the State of Delaware, hereinafter referred to as the Company, and the unlicensed personnel employed on the American flag seagoing vessels manned by the Company, hereinafter referred to as the Unlicensed Personnel or Employees, represented by the National Maritime Union, hereinafter referred to as the Union, Witnesseth:

Whereas, It is the desire of the Union and the Company to enter into an agreement which will prevent strikes and lockouts and insure peaceful adjustment and settlement of all grievances, disputes and differences which may arise between the Company and its Employees, prevent stoppage of work, and tend to stabilize and strengthen the shipping industry, and to establish wage scales and working conditions which will prevail between the parties hereto during the existence of this agreement;

Now, Therefore, It is hereby agreed between the parties as follows:

General Provisions for All Divisions of the Union

Article I.

Section 1. The Company in entering into this agreement hereby recognizes the Union as the

(Board's Exhibit No. 7--continued)

agency for collective bargaining for the Unlicensed Personnel who are members in good standing of the Union employed on board the Company's vessels during period National Labor Relations Board elections are being held.

The Company agrees that it will recognize the Union as the collective bargaining agency for its unlicensed personnel, as, if and when the Union is certified by the National Labor Relations Board as having a majority of the unlicensed personnel employed by the Company.

Section 2. This document shall constitute a provisional agreement between the Company and the Union for its members effective for one year from April 1, 1938, upon ratification by the unlicensed personnel aboard vessels of the Company as hereinafter provided.

If, as and when the Union has been certified by the National Labor Relations Board as the collective bargaining agency for all unlicensed personnel aboard the Company's vessels, this provisional agreement shall automatically become the agreement between the Company and the Union as bargaining agent for all of such employees for the remaining part of the period of one year from April 1, 1938, or for such part of said period as the Union shall continue to represent a majority of the unlicensed personnel on board its vessels, providing ratification of the provisional agreement by the unlicensed personnel aboard vessels has already

(Board's Exhibit No. 7—continued)

taken place. If ratification has not taken place at the time of certification by the Labor Board, the agreement will be effective after ratification for the period of one year from April 1, 1938.

Thereafter this agreement shall continue from year to year unless written notice to terminate or modify is filed by either party thirty days prior to expiration of April 1 of any one year period. Without limiting the foregoing sentence of this paragraph, such renewed agreement shall continue for such part of any subsequent year following April 1, 1939, as the Union shall continue to represent a majority of the unlicensed personnel aboard the Company's vessels.

Ratification of the agreement by the unlicensed personnel aboard vessels of the Company shall be determined by a secret ballot to be conducted jointly by the Company and the Union. Ratification shall be deemed to have taken place when and if 51% of those eligible to vote have been counted as in favor thereof.

Section 3. The Company shall permit, by the distribution of passes, the authorized representatives of the Union to board the Company's vessels for the purpose of consulting with the unlicensed personnel employed thereon, provided, however, the Union's patrolmen shall neither violate any provisions of this agreement nor interfere with or retard the work of the vessel subject to penalty of revocation of the license granted herewith. Insofar as

(Board's Exhibit No. 7—continued)

possible the work of the Union's patrolmen on board the vessel shall be accomplished within two hours.

The Union shall take out insurance which will protect the Company and/or its agent, charterer, operator, and subsidiary or affiliated companies from any claim, loss, damage or liability for loss of life or injury occurring to a representative of the Union while on the property or aboard any vessel owned, chartered or leased by any of the aforementioned parties. Evidence that such insurance protecting the Company and/or its agent, charterer, operator, and subsidiary or affiliated companies against any and all such liability has been taken out and is in force shall be submitted to the Company's satisfaction.

Section 4. Neither the Company nor the Union, during the life of this agreement, as well as during the period of negotiation for its modification or renewal, shall instigate, encourage, or permit any strike, picketing, lockout, "sit-down" or stoppage of work, either direct or in "sympathy" for third parties, insofar as same may be participated in by the employees or members of the respective contracting parties. The Union will not stop, hinder, or restrain, or cause or permit its members to stop, hinder, or restrain the movement of the Company's vessels, loading or discharging cargo on same during the life of this agreement. It is understood between the contracting parties that Union members

(Board's Exhibit No. 7—continued)

participating in any such stoppage of work shall be subject to discharge.

Section 5. Any dispute or grievance arising in connection with the terms and provisions of this agreement shall be settled according to the following procedure:

The unlicensed personnel of each department employed on board vessels operated by the Company should, by secret ballot, elect a representative. However, licensed officers or department heads shall not be eligible for election. One representative shall be elected by and from the Deck Department, one representative elected by and from the Engine Department, and one representative elected by and from the Stewards' Department. Such three representatives shall constitute the ship committee and be the Union representatives aboard the vessel. Any employee who feels that he has been unjustly treated, or has been subjected to an unfair consideration, shall endeavor to have said grievance adjusted either in person or through his respective elected representatives in the following order:

First: Presentation of the complaint to his immediate superior;

Second: Appeal to the head of the department in which the employee involved shall be employed;

Third: Appeal to the master of the ship or a committee composed of the three elected representatives and not more than an equal number of repre-

(Board's Exhibit No. 7—continued)

sentatives consisting of the officers or department heads appointed by the master of the vessel;

Fourth: Appeal directly to the master.

In the event that any such grievance cannot be amicably and promptly settled by resort to the above successive hearings, an appeal may be made to the management's representative in port either directly or together with the Union's shore representative. However, no case shall be reviewed by either the management's representative in port or by the Union's representative in port until it has been reviewed through the procedure outlined above.

If such controversy shall not have been adjusted in the above manner all the facts in the case shall be reduced to writing before the departure of the vessel and submitted in writing to the New York Port Committee composed of three representatives appointed by the Union and three representatives appointed by the Company.

Appeal, if then necessary, shall be in writing to the authorized representative of the Union and the manager of the Marine Department or the president of the Company.

Section 6. If any controversy or grievance arising under the terms of this agreement is not amicably adjusted and settled in the manner hereinbefore provided, same may be submitted to a board of arbitration, under conditions to be mutually agreed upon at the time, selected as follows:

(Board's Exhibit No. 7—continued)

Three (3) to be chosen by the Company and three (3) to be chosen by the Union. These six members shall meet within forty-eight (48) hours after receipt of written notification from either party (Saturdays, Sundays and Holidays excluded) and at that meeting shall select a seventh member. If they cannot agree on the seventh member he shall be designated by the American Arbitration Association. The decision of the board shall be rendered within seventy-two (72) hours unless by agreement time be extended by seventy-two (72) hour periods. The decision of a majority of said board shall be final and binding on both the Company and the Union in such controversy or grievance and shall conclusively determine the same. The Company and the Union shall bear the expenses of their respective appointees but shall share equally the expenses of the seventh member.

Under no circumstances shall there be a cessation of work, strike of any nature, or lockout while arbitration or adjustment of the dispute is in process of being settled as herein agreed upon.

Section 7. The Company and the Union agree, each in its own behalf that there shall be no discrimination, intimidation, or coercion against any employee on board the Company's vessels because of membership or non-membership in any labor organization. Any employee who violates this provision shall be subject to discharge. However, such

(Board's Exhibit No. 7—continued)

action by an individual shall not abrogate this agreement.

Section 8. No member of the Union employed on any vessel operated by the Company shall be required to subscribe to, or become a member of any benefit society, club, or any organization instituted or sponsored by the Company. In the event that any employee is now a member of such benefit society, club, or organization, he may terminate his membership therein at any time and such termination shall not act prejudicially against his present or possible future employment with the Company.

Section 9. The unlicensed personnel shall submit to and undergo such medical examinations as are or may be required by the Company from time to time, and the Company shall retain the right to reject such unlicensed personnel as may be determined by the Company's medical examiners to be unfit for employment in keeping with the Company's rules and regulations. The Company agrees to review carefully any case which the medical examiners of the Union certify to be free from communicable disease and disabling defects and to be able to do the work applied for by the applicant, and if a review fails to establish the facts to the mutual satisfaction of the Company's and Union's medical examiners concerned, the examiner of the Company and of the Union will agree upon a suitable outside doctor whose independent judgment will be deter-

(Board's Exhibit No. 7—continued)

mining on the facts at issue. The expense of the outside consultant will be borne equally by the Company and the Union.

Section 10. Members of the Union while employed on board vessels of the Company agree to comply with all lawful orders of their superior officers and division heads and with all Company rules not inconsistent with the terms and provisions of this agreement. Recognizing the necessity for discipline on board Company vessels and at the same time in order to protect an employee against losing his job unfairly, the Company agrees to post on the bulletin board of each vessel a list of rules which shall constitute cause for which members of the unlicensed personnel may be discharged without further notice.

For other offenses not on the posted list members of the unlicensed personnel shall not be discharged without first having been notified in writing that a repetition of the offense will make him liable to dismissal. In the event that the members of the Union feel that any of the rules or regulations promulgated by the Company are inconsistent with the terms of this agreement, such members agree to make proper and orderly representation as outlined under the grievance machinery of Section 5.

Section 11. The Company shall comply with such laws and regulations as the Secretary of Commerce shall issue through the Bureau of Marine Inspec-

(Board's Exhibit No. 7—continued)

tion and Navigation as to all matters relating to manning, quarters and equipment, and construction and arrangement of the ship.

Section 12. Wherever practicable, lifeboat and other emergency drills shall be held on week days between the hours of 8 A. M. and 4:30 P. M. and on Saturdays between the hours of 8:00 A. M. and 12:00 noon.

Section 13. The Company shall furnish safe gear and working equipment and make every effort to provide safe working conditions at all times.

Section 14. The unlicensed personnel, either on or off watch, shall be paid at double the overtime rate in addition to their regular wages as compensation for handling dynamite, caps, gunpowder and blasting powder.

Section 15. In those outports where there are no regular longshoremen available members of the crew may be allowed to drive winches for handling cargo or handle cargo, and for such work they shall be paid, in addition to their regular monthly wage, the overtime rate. This section shall not be so construed as to be applicable to any work where longshoremen are not available due to labor trouble.

Section 16. No workaway shall be carried except for the sole purpose of providing transportation and, in such case, shall be in addition to the regular crew.

Section 17. When additional certified men are hired for temporary day work on board vessels in

(Board's Exhibit No. 7—continued)

port to assist the regular members of the crew on the work ordinarily performed by them, the rate of pay shall be \$6.00 per eight-hour day, with a minimum of one half day's pay in any one day.

Section 18. If due to illness or other reasons, a member of the unlicensed personnel is assigned to another rating higher than his own he shall receive the higher rate of pay during such assignment, but there shall be no reduction in his regular rate provided such employee takes a job of lower rating, and his customary hours shall then become the hours of the new assignment.

Section 19. When members of the unlicensed personnel in the Stewards' Department are required to do extra work because a vessel sailed "short-handed," the wages of the absent employee shall be divided among the employees who performed his work. When members of the unlicensed personnel in the Deck and Engine Departments are required to work in addition to their regular watches because a vessel sails "short-handed," they shall be paid for the extra time at the overtime rate.

Section 20. After one year of continuous service from April 1, 1938, every unlicensed member of the crew shall be entitled to an annual vacation of twenty-one days with pay.

If an employee has six months' continuous service, he may be granted a vacation of not more than ten days with pay, but such period will be deducted from the twenty-one days.

(Board's Exhibit No. 7—continued)

While the individual's wishes will be considered wherever possible vacations can only be granted at such times and places as do not interfere with the operating necessities of the service. (Vacations shall be cumulative to the extent mutually agreed upon between the individual and the company.)

Continuous service shall not be deemed to be broken by leaves of absence on account of illness, accident, vacations, layoffs for lack of work, or leaves of absence for valid reasons from the service of the Company, provided, however, that no vacation shall accrue during such periods of furlough.

If after six months' continuous service, an employee is terminated for any reason he will be entitled to receive, in addition to his regular pay, one week's pay as a vacation allowance at time of termination. No other cash allowance in lieu of vacations shall be made. Any employee discharged for cause has the right of appeal under the grievance procedure provided in Article I, Section 5.

If an employee is terminated for any reason with less than six months' continuous service, no vacation pay will be allowed.

Section 21. The Company agrees not to discriminate against any employee for union activities which are not inconsistent with the provisions of this agreement. The Union, in turn, agrees that Union activities entered into by its members will not be permitted to interfere with the proper working of the vessel.

(Board's Exhibit No. 7—continued)

Section 22. Members of the unlicensed personnel may remain continually in employment on the same vessel, provided that both the Company and the member desire such employment to continue.

Section 23. All vessels of the Company when leaving port must have deck cargo, when carried, properly secured before arriving at the sea buoy.

Section 24. If at any future date members of the unlicensed personnel of the Company are requested to provide their own uniforms it is agreed that at such time the parties hereto shall meet and adjust same on the basis of additional compensation.

Article II.

Port Time.

Section 1. Port time shall be defined as follows:

(a) Port time shall not commence in the case of a vessel anchoring because of fog or other impediments to navigation, awaiting tides, or berth, or waiting at quarantine to proceed to dock.

(b) When a vessel anchors for the purpose of loading or discharging cargo, port time shall commence when this operation begins.

(c) When the loading or discharging operation ceases for the purpose of moving vessel to another berth, dock or inland port, port time shall cease, provided however the period of moving vessel exceeds three hours.

(d) Port time shall also be deemed to commence when vessel is securely moored to the dock.

(Board's Exhibit No. 7—continued)

Section 2. When a vessel moors at dock or drops anchor for the purpose of loading or discharging cargo or tank cleaning, sea watches may be continued at the option of the master.

Article III.

Overtime.

Section 1. Overtime shall in no case be worked without the prior authorization of the master or person acting by authority of the master.

Section 2. Any and all work performed during port time, as defined in Article II, on Saturday afternoons, Sundays and holidays, shall be considered overtime, except as specified otherwise in Departmental Working Rules.

Section 3. Overtime shall commence at the time any employee shall be called to report for work outside of his regular schedule, provided such member reports for duty within fifteen (15) minutes, otherwise overtime shall commence at the actual time such employee reports for duty; and such overtime shall continue until the employee is released.

Section 4. Where overtime worked is less than one (1) hour overtime for one full hour shall be paid. Where the overtime worked exceeds one hour, the overtime work performed thereafter shall be paid for in one-half-hour periods, a fractional part of such period to count as one-half hour.

(Board's Exhibit No. 7—continued)

Section 5. Where overtime is worked, except as defined in Section 6 of this article, the employee concerned shall sign the overtime sheet immediately on completion of the work, which shall also be countersigned by the department head authorizing the work. If there is any question regarding the amount of overtime allowed, he shall at once follow the procedure outlined in Section 5, Article I.

Section 6. No overtime shall be paid for work in addition to the regular schedule in connection with drills, inspections or examinations required by law or emergency work required for the safety of the passengers, crew, vessel, cargo, or another vessel in distress. This clause shall not apply to annual inspection of the vessel.

Section 7. All money due for approved overtime work shall be paid at the time of signing off, or in any event, not more than forty-eight (48) hours after the completion of the voyage.

Article IV.

Holidays and General Conditions.

Section 1. The Company agrees to recognize the following as holidays: (1) New Year's Day, (2) Washington's Birthday, (3) Memorial Day, (4) Independence Day, (5) Labor Day, (6) Thanksgiving Day, (7) Christmas Day, (8) Armistice Day. In the event that any of the above named holidays fall on Sunday, the following Monday shall be observed as such holiday.

(Board's Exhibit No. 7—continued)

Section 2. When traveling in the course of employment from one vessel to another or from one port to another unlicensed personnel shall be paid regular wages while en route and shall be provided with necessary transportation, and subsistence at the rate of \$3.00 per day, except where subsistence is included with transportation. When traveling overnight, a berth shall be provided.

When any employee is left at any port and when such employee would ordinarily be entitled to transportation under the law, the Company shall forthwith provide transportation back to the port of signing on, and may utilize its own vessels for that purpose.

Section 3. The following items shall be supplied to the unlicensed personnel: (1) A suitable number of clean blankets; (2) white sheets and pillowcases, which shall be changed weekly; (3) face and bath towels, which shall be changed twice weekly. No clean linen or towels shall be furnished until soiled linen and towels have been returned to the steward.

Section 4. Mattresses or pillows filled with straw or excelsior shall not be supplied.

Section 5. All dishes provided shall be of crockery ware.

Section 6. Suitable messrooms shall be provided separate and apart from the sleeping quarters and shall be equipped with stable chairs or benches.

Section 7. All quarters and messrooms shall be

(Board's Exhibit No. 7—continued)

adequately ventilated and a sufficient number of fans to secure such ventilation shall be installed.

Section 8. A sufficient number of lockers shall be installed so that each employee shall have one full-length locker with sufficient space to stow a reasonable amount of gear and personal effects.

Section 9. A recreation room separate from the sleeping quarters of the unlicensed personnel shall be provided on new vessels contracted for after the date hereof for the use of the unlicensed personnel.

Section 10. All quarters are to be kept free from vermin insofar as possible.

Section 11. A refrigerator shall be furnished for night lunches for the use of the unlicensed personnel. Such refrigerator if not electric, shall be adequately supplied with ice for such purpose.

Section 12. When board and room are not furnished, unlicensed members of the crew shall receive the following allowances:

- (a) In lieu of breakfast, \$0.60;
- (b) In lieu of dinner, \$0.75;
- (c) In lieu of supper, \$0.75;
- (d) In lieu of quarters, \$1.25 per night.

Section 13. Meal hours shall be as follows:

Breakfast, 7:30 A. M. to 8:30 A. M.; dinner, 11:30 A. M. to 12:30 P. M.; supper, 5.00 P. M. to 6:00 P. M.

These hours may be varied not to exceed one hour either way.

(Board's Exhibit No. 7—continued)

Article V.

Tank Cleaning.

Men entering tank for cleaning or actually engaged in the removal of sludge, either on deck, in tanks, or in pump room bilges shall be paid the following rates:

- (a) Men on watch, at overtime rate;
- (b) Men not on watch, \$1.00 per hour.

Men on watch between the hours of 6:00 A. M. and 5:00 P. M. required to shift Butterworth machines or wash down the tanks from the deck shall not receive this extra remuneration.

Article VI.

Preferential Employment.

Section 1. The Company agrees that if and when the Union is certified as having a majority of the unlicensed personnel aboard Company vessels and during the period that this agreement is in effect members of the Union shall be given preference of employment at all times if said members are satisfactory to the Company to fill the respective positions; provided however that this section shall not be construed to require the discharge of any employee who may not desire to join the Union, nor shall it apply to reshipments of former employees and particularly employees who have been absent on account of illness, accidents, vacations or leaves of absence. To protect service rights, the company

(Board's Exhibit No. 7—continued)

may transfer unlicensed personnel in its employ from one vessel to another or from one port to another.

Specific Departmental Working Rules

Article VII.

Wage Schedule—Unlicensed Personnel.

Overtime rate for all unlicensed personnel, 75c per hour.

Deck Department: Ordinary seaman, \$65.00; A. B. seaman, \$85.00; boatswain, \$100.00; quartermaster, *\$87.50; carpenter, \$115.00; first pumpman, \$115.00; second pumpman, *\$95.00.

Engine Department: Wiper, \$75.00; fireman, \$85.00; oiler, \$90.00; electrician, *\$175.00; machinist, *\$115.00; storekeeper, *\$90.00; water tender, *\$90.00; water tender—fireman, *\$90.00.

Stewards' Department: Chief steward, \$140.00; chief cook, \$120.00; second cook and baker, \$100.00; utility man, \$60.00; P. O. and officers' messman, \$65.00; crew messman, \$60.00; galleyman, *\$70.00.

(*When carried.)

Article VIII.

Deck Department Working Rules.

Section 1. The hours of work for day workers shall be eight (8) hours per day week days between 8:00 A. M. and 5:00 P. M. with an hour off for lunch and from 8:00 A. M. to 12 noon on Saturdays.

Section 2. (a) At sea and in all open harbors

(Board's Exhibit No. 7—continued)

or roadsteads, the crew shall stand regular watches as required by the master, but no unnecessary work shall be performed on Saturday afternoons, Sundays or holidays or between the hours of 5:00 P. M. and 6:00 A. M. However, no chipping nor scaling shall be required between 6:00 A. M. and 8:00 A. M.

(b) On Saturday afternoons, Sundays and holidays, and between 5:00 P. M. and 6:00 A. M. at sea, the crew shall be required to do the necessary work for the safe navigation and operation of the vessel, but all work distinct from these required routine duties shall be paid for at the regular overtime rates.

Section 3. When sea watches are broken they shall be set when the vessel leaves for sea but no later than noon of the day of departure. Docking and undocking shall be overtime for the watch below when called upon to perform this work and shall be paid for at the overtime rate.

Section 4. Ordinary seamen shall be required to clean the sailors' toilet, wash rooms and quarters on ship's time.

Section 5. The carpenter, when carried, if required to stand by Saturday afternoons, Sundays and holidays, or between the hours of 5:00 P. M. and 8:00 A. M.; such time shall be overtime.

Section 6. The duties of the quartermaster, when carried, at sea shall be to steer the vessel when vessel is not fitted with automatic steering gear. When vessel is fitted with automatic steering gear, he may assist in the maintenance of the wheel-house

(Board's Exhibit No. 7—continued)

and bridge deck. In port he shall stand gangway watch and assist the senior deck officer in charge.

Section 7. The day of departure shall be the day the vessel leaves for sea from the port from which the vessel is cleared and sea watches set and maintained from that port.

Section 8. One hour shall be allowed for batten-down rigging up or securing general deck gear on Saturday afternoons, Sundays and holidays or between the hours of 5:00 P. M. and 8:00 A. M. by the watch without payment of overtime; provided however, that if the work exceeds one hour during the period specified the regular overtime rate shall apply for the excess time.

Engine Department Working Rules.

Section 1. The hours for all day workers shall be eight (8) hours per day weekdays from 8:00 A. M. to 5:00 P. M. with one hour off for lunch, and from 8:00 A. M. to 12:00 Noon on Saturdays.

Section 2. When an electrician is carried he shall be responsible for the upkeep and repair, alteration and renewal and reasonable installations in connection with the vessel's electrical equipment, as directed by the engineer in charge.

Section 3. When a machinist is carried, his duties at sea and in port shall consist of assisting in the general repair, upkeep and reasonable installation of the ship's machinery and equipment, as directed by the engineer in charge. He shall not

(Board's Exhibit No. 7—continued)

be required to do any painting or chipping and sealing of paint work or polishing brass work.

Section 4. (a) Pumpmen at sea: The hours of work for pumpmen shall be from 8:00 A. M. to 12:00 Noon; from 1:00 P. M. to 5:00 P. M. weekdays and from 8:00 A. M. to 12:00 Noon Saturdays. For all work performed in excess of these hours he shall be paid at the regular overtime rate. Pumpmen's duties shall consist of handling fuel oil, ballast, cargo and tank cleaning equipment and all work necessary for the maintenance and operation of cargo pumps, auxiliaries, general cargo lines, and all deck machinery. He shall not be required to chip paint, scale paint, polish brass, or do any work that is not considered maintenance for the machinery under his care. He shall not be required to make heavy installations where this work is customarily done by shore gangs. This however, shall not be construed to apply to renewals and replacements of worn out equipment.

(b) Pumpmen in port: At the discharge port, the first pumpman's eight (8) hours are to begin with the instructions to start discharging cargo or with the instructions to stand by to discharge cargo; such time to be continuous without deducting time for meals if such time is twenty minutes or less. If carried, the second pumpman's eight (8) hours are to begin when he relieves the first pumpman. Each pumpman is to work eight (8) hours in each twenty-

(Board's Exhibit No. 7—continued)

four (24) hours, and any additional time worked shall be considered overtime.

Section 5. (a) Watertenders at sea: Watertenders, when carried, shall tend water and boiler auxiliaries, fuel service tanks, oil temperatures and stack drafts in fire-room and supervise firing. They shall handle any valves connected with the operation of the boilers as directed by the engineer in charge. Watertenders shall not be required to crack stops and warm up steam lines when cutting in. However, when stops have been cracked they may be further regulated by the watertenders under the direction of the engineer in charge.

(b) Watertenders in Port: Watertenders, when carried in port on ships having watertube boilers, shall stand watches and tend water, auxiliaries, and supervise firing. While on watch, they shall not be required to perform any other duties than those herein stated. When working on day work they shall assist in the general repairs in the Engine Department as directed by the engineer in charge.

Section 6. (a) Oilers at sea: 1. Oilers on watch on reciprocating engines. Their work shall consist of oiling main and auxiliary machinery, the steering gear, ice machine and blowers which may be located outside engine room spaces. They are to keep hand-rails, gratings and floor plates wiped in the immediate vicinity of moving machinery and if water guages and checks are in engine room they

(Board's Exhibit No. 7—continued)

shall tend water. Oilers at sea on all vessels shall not be required to chip, scale, or wash paint, or paint, shine brass, or perform any other duties aside from the regular routine work.

2. Oilers on watch on turbine engines: If required to tend water, their duties shall remain as outlined for reciprocating engines. When not required to tend water, oilers may be required to perform maintenance work, said maintenance work not to exceed one hour daily.

3. Oilers on watch on motor vessels: They shall be governed by the same rules as are in effect for vessels with reciprocating engines.

4. On all vessels when at sea the oilers on watch shall not be required to attend or operate the additional engine room machinery necessary for the functioning of the Butterworth machines in the tank cleaning operation.

(b) Oilers in port: 1. Oilers in port on reciprocating, turbine and motor vessels if on watch at anchor or at the dock, provided they are not required to tend water, shall assist in making repairs between the hours of 6 A. M. and 5 P. M. No work outside of the routine standing of the anchor watch shall be required of the oilers between the hours of 5 P. M. to 6 A. M.

2. When in port and watches broken, their hours shall be those of day workers, and shall assist with the repairs in Engine Department as directed by the engineer in charge.

(Board's Exhibit No. 7—continued)

3. Members of the unlicensed personnel of the Engine Department on motor vessels when required to enter the casings for the purpose of cleaning or scaling shall be paid the tank-cleaning rate.

Section 7. (a) Firemen at sea: On watch they shall tend the fires, clean burners, fuel oil strainers and keep their stations clean. They are not to go above the first grating, behind the boilers on ship's side or on ship's side abreast the boilers or below the floor plates for any cleaning or painting except to clean loose oil resulting from their work. Firemen on watch shall not be required to chip these aforementioned places. They are not to tend water unless the checks and guages are in the fire-room in which case they may be required to tend water and shall be rated a fireman-watertender. For vessels fitted with more than three Scotch boilers and where firemen are required to tend water, they shall not be required to clean any station with the exception of the floor plates.

Firemen shall assist with the blowing of tubes where vessel is equipped with mechanical tube blowing apparatus. On vessels not so equipped and where tubes are blown by hand by opening uptake doors and using hand lance, the firemen assisting shall be paid the tank-cleaning rate for such time as required for this duty.

(b) Firemen in port: When watches are not broken, their duties shall be the same as at sea. When watches are broken their hours shall be the

(Board's Exhibit No. 7—continued)

same as day workers and their duties shall consist of assisting in the general repairs and maintenance as directed by the engineer in charge. Firemen on motor vessels when not required to tend fires at sea may be required to do maintenance work on their watches except for Saturday afternoons, Sundays and holidays. Maintenance work on night watches will consist of general cleaning but no painting or chipping will be done.

Section 8. Firemen-watertenders (combination). When carried, they shall perform the duties of firemen as defined in Section 7 and tend water at sea on vessels fitted with watertube boilers on which two boilers are used for the main engine. If more than two boilers are used for main engines, watertenders shall be carried. In port when watches are broken their duties shall be the same as those of firemen in port.

Section 9. The storekeeper when carried, at sea or in port, shall supervise and assist the wipers in the maintenance and general work in Engine Department spaces, keep storerooms in order as directed by the engineer and assist in repair work when required.

Section 10. Wipers, at sea and in port, shall be required to do the general cleaning and upkeep in the Engine Department spaces and assist in repair work as directed by the engineer in charge. When cleaning fuel oil and domestic fresh water tanks they shall receive the regular tank-cleaning rate.

(Board's Exhibit No. 7—continued)

Wipers shall also keep the wipers' and firemen's toilet, washrooms and quarters clean on ship's time.

Stewards' Department Working Rules.

Section 1. The chief steward shall be recognized as the head of the Stewards' Department and shall direct the work of the personnel employed therein. The steward likewise may do any work in the preparation of meals or other work which he may deem necessary for the efficient operation of the department.

Section 2. The hours of the Stewards' Department shall be eight (8) hours each day in a spread between 6:15 A. M. to 6:15 P. M. except for the utility man. No overtime shall be paid for the preparation and serving of regular meals and cleaning of quarters, galley and messrooms, within hours specified.

Section 3. Normal manning scale of stewards' department shall be as follows:

Number of Crew Excluding Stewards' Department	Manning Scale Stewards' Department
23 to 28 inclusive	6
29 to 36 inclusive	7

(a) On vessels having a crew of 37 or more exclusive of Stewards' Department, additional members of the Stewards' Department shall be added on the basis of one (1) additional man for five (5) or less of additional crew or passengers carried.

(Board's Exhibit No. 7—continued)

(b) One employee of the Stewards' Department not engaged in the preparation and serving of food shall be rated as utility man. Hours of work shall be eight hours in a spread between 5 A. M. and 5 P. M. His duties shall consist of lighting the galley fires, cleaning the toilets and bathrooms, except those of firemen and sailors, and performing general cleaning work under the supervision of the chief steward.

Section 4. Members of the Stewards' Department shall not be required to prepare and serve other than the three regular meals and prepare regular night lunches for the watches. If, on the orders of the master or commanding officer, lunches are served in addition to the three regular meals already provided for, one hour's overtime shall be paid to each man actually engaged in the preparing and serving of such lunches, provided however, that where meals are served to longshoremen and Panama Canal laborers on board any vessel, the sum of thirty cents for each person served shall be equally distributed to those actually engaged in this work, in lieu of overtime.

Section 5. In port all work performed on Saturday afternoons, Sundays and holidays, shall be paid for at the regular overtime rate. If employees in the Stewards' Department are required to work Saturday afternoons in port, they shall receive not in excess of four hours' overtime pay unless the as-

(Board's Exhibit No. 7—continued)

signment requires work in addition to their regular duties specified in Section 2.

Section 6. In port all refuse compartments shall be located convenient to the galley.

Section 7. No member of the Stewards' Department shall be required to serve coffee or meals in the engine room, nor shall they be required to enter the engine room at any time. Upon order of the Master they may be required to serve coffee or meals on the bridge.

Section 8. When members of the Stewards' Department are required to stow stores away requiring more than fifteen minutes they shall be paid overtime in addition to their regular wages at the overtime rate. Members of the Stewards' Department shall not be required to carry stores or linens from shore to vessel or from vessel to shore.

Section 9. Members of the Stewards' Department shall not be required to do chipping, scraping or painting. However, the utility man may be required to "touch up" paint when necessary.

Section 10. For vessels running coastwise on arrival at discharge port, sufficient bread, if available, will be supplied for a forty-eight hour period.

Article IX

Section 1. Ratification of this agreement by the unlicensed personnel employed on the vessels of the Company shall be conclusive that the agreement is binding on all such unlicensed personnel and is

(Board's Exhibit No. 7—continued)

within the authorization of the Constitution of the Union.

Section 2. In the event that any provision of this contract shall at any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire agreement, it being the express intention of the parties hereto that all other provisions not so declared invalid, shall remain in full force and effect.

In witness whereof, the parties hereto have caused these presents to be executed by their duly authorized officers in the City of New York, State of New York this 14th day of January, 1938.

NATIONAL MARITIME
UNION OF AMERICA
DECK DIVISION
BY JOE CURRAN
ENGINE DIVISION
BY MOE BYNE
STEWARDS' DIVISION
BY GETHYN LYONS

(Notary)

By: H. ESSELBORN
Manager, Operating
Division
Standard Oil Company
of New Jersey.

(Notary)

(Board's Exhibit No. 7—continued)

The following Companies have signed the above agreement:

Standard Oil Co. of New Jersey

Socony-Vacuum Oil Co.

Pennsylvania Shipping Co.

Sinclair Oil Co.

Gulf Oil Corp.

C. D. Mallory & Co.

Tide-Water Associated Oil Co.

The following Companies are to be signatory to the Agreement:

The Texas Co.

City Service Oil Co.

Pure Oil Co.

Richfield Oil Co.

Continental Oil Co.

Kellogg Steamship Co.

Pan-American Petroleum Co.

23	F Roderick	30	Oiler	“	S	Mo—Mrs. Josephine 316 Warren St. Providence, R.I.
24	J H Breithaupt	39	Fireman	“	S	Mo—Mrs. Marie, Glasco, N.Y.
25	D F Giovannia	25	Fireman	“	S	Step-Fa—F. C. Brown, Rolinson, Me.
26	Jack Kane	21	Fireman	“	S	Mo—Mrs. Addie, 624, 6th. St. Port Arthur, Texas.
27	Joeey E Matlock	23	Wiper	“	S	Mo—Mrs. Effie, Mount Enterprise, Texas.
28	Simeom C Harris	46	Wiper	“	S	Sis—Monet Mason, Silbee, Texas, % Miss Horn. Wife—
29	Michel Iesec	59	Steward	“	M	308 Thomas Blvd., Port Arthur, Texas. Wife—Mrs. L.
30	Leighton F Bush	38	Cook	“	M	644 Thomas, Port Arthur, Texas.
31	Ted Snook	17	Messman	“	S	Mo—Mrs. Wm. K. 2927, 7th. St. Port Arthur, Texas Fa—Wm.
32	Cecil McDonald	21	Messboy	“	S	Sugartown, La.
33	Roland La Flier	23	Messboy	“	S	Mo—Mrs. Rennie T. La Fleur, Ville Platte, La.
34	Vernon Craft	32	Messboy	“	S	Mo—Mrs. J F, Merryville, La.

CREW LIST

Vessel S/S "Washington"
From Port Arthur, Texas

Sailing Date January 12th, 1938
To Bayonne, N. J.

NOTE: Crew List Must Be Mailed Before Each Sailing.

No.	Name	Age	Capacity	Citizen of What Country	Married or Single	Name, Relationship and Address of Next of Kin
1	Charles H. Olson	39	Ch. Mate	U.S.A.	M	Wife—Mrs. Nell, 2815, 7th. St. Port Arthur, Texas.
2	J W Carr	31	2ND. Mate	"	S	Fa—C.S. Phillipsburg, Mo.
3	Michael Corsi	32	3RD. Mate	"	M	Wife— 108 Warren St. Brooklyn, N.Y.
4	Wm. M. Cline	45	Rdo. Opr.	"	M	Wife— 426 West 23RD. Houston, Texas.
5	Walter Giese	52	Boatswain	"	S	None— 1040 Houston Ave., Port Arthur, Texas.
6	Fred F Franklin	37	Quart.	"	M	Wife—Mrs. F. F. 121 Lakeshore Drive, Port Arthur, Tex.
7	Wesley Lewis	30	Quart.	"	S	Mo—Mrs. Laura Lewis, 934 Wheaton St., Savannah, Ga.
8	F Richards	49	Quart.	"	S	Niece—Mrs. Mary Whitehouse, Oregon City, Ore.
9	Alfred Forde	40	A.B.	"	S	Bro—S. 562, 69th. St. Brooklyn, N.Y.
10	Carrol B Crosby	19	A.B.	"	S	Mo—Mrs. E R Flaherty, 831 Lakeshore Drive, Port Arthur, Tex.
11	Pleasant M Linville	38	A.B.	"	S	Mo—Mrs. C E Linville, 1250 W 2nd. St. San Pedro, Calif.
12	Leo Summerlin	28	O.S.	"	S	Bro—B V Summerlin, Laverne, Ala.
13	Louis A Simmons	34	O.S.	"	S	Mo—Mrs. R Simmons Kirbyville, Texas.
14	W C Bourn	34	O.S.	"	M	Wife—Mrs. B. 703 Washington St. Port Neches, Texas
15	Nathaniel Dilbert	49	Ch. Engr.	"	M	Wife—Mrs. N. 3209, 6th. St. Port Arthur, Tex.
16	Ivar N Riise	65	1st. Asst.	"	M	Wife— Smallwood, Ill., N.Y.
17	W A Gower	34	2ND. "	"	S	Mo—2611 Tyson Ave., Tampa, Fla.
18	Arthur J Baird	40	3RD. "	"	M	Wife—Mrs. A J. 820 Woodworth Blvd., Port Arthur, Tex.
19	David B Montgomery	28	Pumpman	"	M	Wife— 542, 6th. St. Port Arthur, Tex.
20	A Maselli	38	2ND. Pump.	"	S	Aunt—Mrs. M. Dickinson, Texas.
21	Geo. Krueger	23	Oiler	"	S	Mo—Mrs. R. 690 Mill St. Newbreunfels, Texas.
22	G B Riggs	31	Oiler	"	S	Mo—Mrs. Nancy, Abilene, Tenn.
23	F Roderick	30	Oiler	"	S	Mo. Mrs. Josephine 316 Warren St. Providence, R.I.
24	J H Breithaupt	39	Fireman	"	S	Mo—Mrs. Marie, Glasco, N.Y.
25	D F Giovanna	25	Fireman	"	S	Step-Fa— F. C. Brown, Robinson, Mo.
26	Jack Kane	21	Fireman	"	S	Mo. Mrs. Addie, 624, 6th. St. Port Arthur, Texas.
27	Jacey E Matlock	23	Wiper	"	S	Mo—Mrs. Effie, Mount Enterprise, Texas.
28	Simoon C Harris	46	Wiper	"	S	Sis—Monet Mason, Silbee, Texas, 7/ Miss Horn.
29	Michel Lessee	23	Steward	"	M	Wife— 308 Thomas Blvd., Port Arthur, Texas.
30	Leighton F Rush	38	Cook	"	M	Wife—Mrs. L. 644 Thomas, Port Arthur, Texas.
31	Ted Snook	17	Messman	"	S	Mo—Mrs. Wm. K. 2927, 7th. St. Port Arthur, Texas
32	Cecil Melbould	21	Messboy	"	S	Fa—Wm. Sugartown, La.
33	Roland La Fleur	24	Messboy	"	S	Mo—Mrs. Ronnie T. La Fleur, Ville Platte, La.
34	Vernon Craft	32	Messboy	"	S	Mo—Mrs. J F. Merryville, La.

22	Jim Russell	39	Oiler	"	M	Route #1 Box 35, Warren, Tex.
23	Edward Carson	38	Oiler	"	S	Sis—Mrs. E. D. Fraun Center St. Westfield, Pa.
24	Donald Giovannia	25	Fireman	"	S	Fa—F. C. Brown Robinson, Me.
25	J. T. Stewart	34	Fireman	"	S	Mo—Mrs. E. 400 W. 14th. St. Port Arthur, Mo—Marie
26	J. H. Breithaupt	40	Fireman	"	S	Glasco, N.Y. Bro—Wm. P. Lavin
27	Ralph Lavin	20	Wiper	"	S	10 Cedar St. Brooklyn, N.Y.
28	Fred W. Williams	40	Wiper	"	S	Mo—Mrs. A. Williams 2326 Loraine Ave., Cleveland, O.
29	M. Lesc	59	Steward	"	M	Wife— 3408 Thomas Blvd., Port Arthur, Tex.
30	L. Bush	38	Cook	"	M	Wife— 644 Thomas Blvd., Port Arthur, Tex.
31	C. C. O'Neal	18	Messman	"	S	Mo—Mrs. Elma 2212, 9th. St. Port Arthur, Tex.
32	Stanford Kelsey	23	Messboy	"	S	Mo—Mrs. B. Hall 100 Fernwood Drive, Dayton, O.
33	Luther G. Olive	22	Messboy	"	S	Mo—Mrs. L. W. Olive Strong, Ark.
34	Cecil McDonald	22	Messboy	"	S	Fa—Wm. [Illegible] Suga [Illegible]

RESPONDENT'S EXHIBIT No. 19-B

CREW LIST

Vessel S/S Washington
Sailing Date November 6th, 1938

From New Haven, Conn.
To Anesville, La.

Note: Crew list must be mailed before each sailing.

No.	Name	Age	Capacity	Citizen of What Country	Married or Single	Name, Relationship and Address of Next of Kin
1	C. B. Johannesen	49	Ch. Mate	USA	M	Wife— 483 Pine St. Beaumont, Texas.
2	J. W. Carr	31	2ND.	"	S	Fa—C. S. Carr Phillipsburg, Mo.
3	M. Corsi	32	3RD.	"	M	Wife— 8712, 55th. Road, Elmhurst, L.I., N.Y.
4	Wm. M. Cline	45	Rd. Opr.	"	M	Wife— 527 W. 19th. St. Houston, Texas.
5	Harry V. Kerr	38	Bos'n.	"	S	Sis—Mrs. N. Martin 1231, 17th. St. Port Arthur, Tex.
6	Archie C. West	37	Quart.	"	S	Mo—Mrs. A. Peterson California, Mo.
7	C. E. Bridwell	35	Quart.	"	S	Fa—Elmer 455 E. Grand, Springfield, Mo.
8	C. E. Hansen	25	Quart.	"	S	Sis—Mrs. H. T. Brader 226 S. Fulton St. Allentown, Pa.
9	E. R. Munsell	41	A.B.	"	S	Fa—John Route #4, Bloomington, Ill.
10	Astor E. Poag	24	A.B.	"	S	Aunt—Mrs. Elmhurst Horgots Cherokee, Ala.
11	Harry G. Pedersen	50	A.B.	"	M	Wife— 1522 Panola St. New Orleans, La.
12	L. A. Simmons	34	O.S.	"	S	Mo—Mrs. R. Simmons Kirbyville, Tex.
13	Ezra E. Fitts	26	O.S.	"	S	Mo—Mrs. E. J. Fitts Route #1 Box 27, Annaeo, La.
14	Manuel Thibodaux	37	O.S.	"	M	Wife— 233, 7th. St. Port Arthur, Tex.
15	Nat. Dilbert	49	Ch. Eng.	"	M	Wife— 3209, 6th. St. Port Arthur, Tex.
16	E. Andersen	47	1ST. Asst.	"	S	None— 520 Dallas Ave, Port Arthur, Tex.
17	W. A. Gower	34	2ND.	"	S	Mo—Mrs. W. A. Gower, 2611 Tyson Ave., Tampa, Flo.
18	R. E. Murphy	31	3RD.	"	M	Wife— 102, 73rd. St. Houston, Tex.
19	David B. Montgomery	29	Pumpman	"	M	Wife— 749 Mobile Ave., Port Arthur, Tex.
20	A. Maselli	39	2ND. Pump.	"	S	Aunt—Mrs. Margaret Maselli Dickenson, Tex.
21	Geo. Krueger	23	Oiler	"	S	Mo—Mrs. Laska M. 690 Mill St. Newbernunfels, Tex.
22	Jim Russell	39	Oiler	"	M	Wife— Route #1 Box 35, Warren, Tex.
23	Edward Carson	38	Oiler	"	S	Sis—Mrs. E. D. Fraun Center St. Westfield, Pa.
24	Donald Giovannia	25	Fireman	"	S	Fa—F. C. Brown Robinson, Mo.
25	J. T. Stewart	34	Fireman	"	S	Mo—Mrs. E. 400 W. 14th. St. Port Arthur, Mo—Marie Glascio, N.Y.
26	J. H. Breitbaup	40	Fireman	"	S	Bro—Wm. P. Lavin 10 Cedar St. Brooklyn, N.Y.
27	Ralph Lavin	20	Wiper	"	S	Mo—Mrs. A. Williams 2426 Loraine Ave., Cleveland, O.
28	Fred W. Williams	40	Wiper	"	S	Wife— 3408 Thomas Blvd., Port Arthur, Tex.
29	M. Lesce	59	Steward	"	M	Wife— 614 Thomas Blvd., Port Arthur, Tex.
30	L. Bush	38	Cook	"	M	Mo—Mrs. Elma 2212, 7th. St. Port Arthur, Tex.
31	C. C. O'Neal	18	Messman	"	S	Mo—Mrs. B. Hall 100 Fernwood Drive, Dayton, O.
32	Stanford Kelsey	23	Messboy	"	S	Mo—Mrs. L. W. Olive Strong, Ark.
33	Luther G. Olive	22	Messboy	"	S	Fa—Wm. [illegible] Suga [illegible]
34	Cecil McDonald	22	Messboy	"	S	

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9518

THE TEXAS COMPANY, MARINE DIVISION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of The Texas Company, Marine Division and National Maritime Union, Port Arthur Branch," the same being Case No. C-1276 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Amended charge filed by the National Maritime Union, Port Arthur Branch, sworn to August 24, 1938.

2. Complaint and notice of hearing issued by the National Labor Relations Board, dated September, 3, 1938.

3. Amended answer of respondent, sworn to September 12, 1938.

4. Certified copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated September 9, 1938.

5. Certified copy of order designating Charles E. Persons Trial Examiner for the National Labor Relations Board in place and stead of Howard Myers, dated November 25, 1938.

6. Copy of respondents' answer to complaint, sworn to September 9, 1938.

Documents listed hereinabove under items 1-5, inclusive, are contained in the exhibits and included under the following item:

7. Stenographic transcript of testimony before Howard Myers and Charles E. Persons, Trial Examiners for the National Labor Relations Board, on September 12, 13, 14, 15, 16, 19, 20, 21, 22 and November 28 and 29, 1938, respectively, together with all exhibits introduced in evidence.

8. Copy of Trial Examiner Myers's Intermediate Report, dated May 1, 1939.

9. Copy of respondent's telegram, dated May 9, 1939, requesting an extension of time for filing exceptions to intermediate report.

10. Copy of telegram, dated May 10, 1939, granting request for additional time for filing exceptions.

11. Copy of respondent's exceptions to the intermediate report, dated July 14, 1939.

12. Copy of respondent's letter, dated May 12, 1939, requesting permission to file briefs and oral argument.

13. Copy of letter, dated May 17, 1939, granting permission to file briefs.

14. Copy of notice of hearing for the purpose of oral argument, dated September 22, 1939.

15. Copy of respondent's request for further postponement of hearing, dated September 28, 1939.

16. Copy of letter granting aforesaid request, dated October 5, 1939.

17. Copy of notice of postponement of hearing, dated October 5, 1939.

18. Copy of list of appearances at oral argument held October 24, 1939.

19. Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board January 24, 1940, together with affidavit of service and United States Post Office return receipts thereof.

20. Copy of respondent's request for extension of time to comply with Board's order or take other action, together with copy of letter dated February 2, 1940, granting request.

21. Copy of respondent's motion to reopen the record and for leave to introduce further evidence, sworn to March 6, 1940.

22. Copy of order denying motion to reopen the record and for leave to introduce further evidence, dated March 22, 1940.

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 11 day of June 1940.

[Seal]

NATHAN WITT,

Secretary

NATIONAL LABOR RELATIONS
BOARD

[Endorsed]: No. 9518. United States Circuit Court of Appeals for the Ninth Circuit. The Texas Company, Petitioner, vs. National Labor Relations Board, Respondent, National Maritime Union of America, Intervener. Transcript of Record upon Petition to Review and Request for Enforcement of Order of the National Labor Relations Board.

Filed: June 17, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9518

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

PETITIONER'S STATEMENT OF POINTS
AND DESIGNATION OF MATERIAL
PARTS OF RECORD PURSUANT TO
RULE 19

STATEMENT OF POINTS

Petitioner, The Texas Company, hereby states the points on which it intends to rely on this petition for review, as follows:

1. There is no substantial evidence in the record to support the Board's finding and conclusion that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(1) of the Act.

2. There is no substantial evidence in the record to support the Board's finding and conclusion that your petitioner warned its employees against organization, threatened to discharge Union members

and questioned an employee about membership in the Union and thereby interfered with, restrained and coerced its employees on its vessel, the S. S. "California", in the exercise of the rights guaranteed by Section 7 of the said Act.

3. There is no substantial evidence in the record to support the Board's finding and conclusion that your petitioner discharged Clarence Buckless and J. Gordon Rosen from the S. S. "Nevada" because of Union activities.

4. There is no substantial evidence in the record to support the Board's finding and conclusion that your petitioner discharged J. Gordon Rosen from the S. S. "Washington" because of Union activities.

5. The Board erred, as a matter of law, in awarding back pay to Clarence Buckless for the period from April 18, 1938 to June 1, 1938, since the Board did not direct reinstatement of said Clarence Buckless.

6. The Board erred, as a matter of law, in directing reinstatement of J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere.

7. The Board erred, as a matter of law, in awarding back pay to J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere.

8. The Board erred, as a matter of law, in directing petitioner to cease and desist and to take affirmative action as specified in the Board's decision and order and to post notices to such effect.

9. The Board erred in sustaining the Trial Examiner's rulings as to evidence, as follows:

(a) Denial of petitioner's motion to strike out the testimony of Board's witness J. Gordon Rosen respecting telegrams and a letter sent by members of the crew of the S. S. "Washington" to the New York office of petitioner, on the ground there is no evidence that such telegrams and letter were ever received by petitioner.

(b) Denial of petitioner's motion to strike out the testimony of Board's witness J. Gordon Rosen as to talks he had with the Masters of petitioner's vessels as a representative of the seamen on such vessels, on the ground such evidence was immaterial and irrelevant.

(c) Denial of petitioner's motion to strike out the testimony of Board's witness J. Gordon Rosen describing meetings of ships crews and conversations he had with the Masters and other officials of the S. S. "Nevada" and the S. S. "Washington", on the ground such conversations were hearsay.

10. The Board erred in denying petitioner's motion to reopen the record and for leave to introduce further and newly discovered evidence to establish that J. Gordon Rosen had obtained regular and substantially equivalent employment elsewhere.

11. The Board erred in holding that the facts alleged in petitioner's motion to reopen the record and for leave to introduce further and newly discovered evidence in respect to J. Gordon Rosen did

not establish that said J. Gordon Rosen had obtained regular and substantially equivalent employment elsewhere.

DESIGNATION OF PARTS OF RECORD

Petitioner hereby designates the parts of the record which it deems necessary for consideration of the aforesaid points, as follows:

Testimony

Testimony of J. P. Roney (Stenographer's Minutes pp. 14-48)

Testimony of J. Gordon Rosen (Stenographer's Minutes pp. 124-455; 1130-1131)

Testimony of George B. Hart (Stenographer's Minutes pp. 455-477)

Testimony of James P. Blasingame (Stenographer's Minutes pp. 477-626)

Testimony of Clarence Buckless (Stenographer's Minutes pp. 627-886; 1132; 1895-1932)

Testimony of Leo Hermen (Stenographer's Minutes pp. 1007-1098)

Testimony of John Owens (Stenographer's Minutes pp. 1098-1102)

Testimony of E. H. Baldwin (Stenographer's Minutes pp. 1132-1241)

Testimony of Dave Rosen (Stenographer's Minutes pp. 1241-1318)

Testimony of Carl C. Tranberg (Stenographer's Minutes pp. 1516-1648)

Testimony of Hugo Swanson (Stenographer's Minutes pp. 1649-1713)

Testimony of Herman Hopper (Stenographer's Minutes pp. 1715-1736; 1760-1762)

Testimony of Charles L. Olson (Stenographer's Minutes pp. 1737-1760)

Testimony of Clarence V. Peterson (Stenographer's Minutes pp. 1980-1993)

Testimony of G. A. Bergman, (Stenographer's Minutes pp. 1995-2060; 2253-2265)

Testimony of Ernest Zihrl (Stenographer's Minutes pp. 2060-2083; 2163-2165)

Testimony of J. W. Carr (Stenographer's Minutes pp. 2085-2163)

Testimony of C. B. Johannesen (Stenographer's Minutes pp. 2165-2229)

Stipulations and Admissions

Stipulation as to testimony of Peter Peterson (Stenographer's Minutes p. 1976, line 19 to p. 1979, line 4)

Admission of counsel relative to other employment obtained by J. Gordon Rosen (Stenographer's Minutes p. 1965, line 25 to p. 1971, line 14)

Exhibits

Board's Exhibit B-2-A (Complaint)

Board's Exhibit B-2-C (Amended charges)

Board's Exhibit B-4 (Amended answer)

Board's Exhibit B-6

Board's Exhibit B-7

Board's Exhibit B-8

Board's Exhibit B-9

Board's Exhibit B-10

Respondent's Exhibit R-12

Respondent's Exhibit R-18

Respondent's Exhibit R-19-A

Respondent's Exhibit R-20-B

Pleadings, Motions, Orders etc.

Complaint

Amended Answer

Intermediate Report of Trial Examiner

Exceptions to Intermediate Report

Decision of Board

Motion to Reopen

Order Denying Motion to Reopen

Argument and Rulings on Motion to Dismiss
(Stenographer's Minutes p. 1969, line 14 to p.
1971, line 14; p. 2281, line 17 to p. 2283, line
15)

Dated August 22, 1940.

Respectfully submitted,

ALBERT E. VAN DUSEN,

135 East 42nd Street, New
York City, N. Y.

J. A. McNAIR,

929 So. Broadway, Los An-
geles, California

JAMES H. PIPKIN,

P. O. Box 2332, Houston,
Texas.

Attorneys for Petitioner, The
Texas Company.

[Endorsed]: Filed Aug. 26, 1940. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

RESPONDENT'S AMENDED DESIGNATION
OF PORTIONS OF RECORD TO BE PRINTED

Comes now the National Labor Relations Board, respondent in the above proceeding, and, by way of amendment to respondent's Designation of Record previously filed herein, hereby designates the following parts of the record as that portion to be contained in the printed record in addition to those parts heretofore designated by petitioner, the references being to the typewritten transcript and exhibits certified by the respondent and filed herein:

1. From page 889, line 4, to page 889, line 14.

From page 893, line 1, to page 896, line 4.

From page 912, line 6, to page 912, line 23.

From page 921, line 17, to page 922, line 14.

From page 928, line 24, to page 930, line 5.

From page 951, line 1, to page 951, line 24.

From page 1475, line 23, to page 1476, line 12.

From page 1486, line 1, to page 1498, line 2.

From page 1841, line 5, to page 1841, line 20.

From page 1854, line 17, to page 1858, line 8.

From page 1859, line 4, to page 1859, line 8.

From page 1874, line 15, to page 1876, line 1.

From page 1878, line 20, to page 1879, line 9.

From page 1886, line 8, to page 1886, line 25.

From page 1891, line 6, to page 1891, line 25.

2. Board's Exhibit 5.

Dated at Washington, D. C., this 21st day of September 1940.

LAURENCE A. KNAPP,
Assistant General Counsel

[Endorsed]: Filed Sept. 28, 1940. Paul P.
O'Brien, Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit. 3

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record
In Five Volumes
VOLUME V
Pages 1725 to 1799

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

DEC 10 1942

No. 10237

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

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Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals
for the Ninth Circuit

No. 9518

THE TEXAS COMPANY

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

NATIONAL MARITIME UNION OF
AMERICA,

Intervener.

Upon Petition to Review, and Request for Enforcement of, Order of the National Labor Relations Board

OPINIONS

Before: Denman, Mathews and Stephens, Circuit Judges.

Denman, Circuit Judge:

Petitioner, owning and operating a fleet of ocean going gasoline and oil tankers, admittedly engaged in interstate and foreign commerce, petitions to have set aside an order of the National Labor Relations Board (a) ordering petitioner to cease and desist from the unfair labor practice of discouraging the organization of its crew employees from collective bargaining; (b) ordering the payment of back pay to one seaman and the reinstatement

with back pay of another, found by the Board to have been discharged because of their activities as representatives of the crew in attempted collective bargaining with their captains; and (c) ordering the posting of cease and desist notices on all its vessels. The Board cross-petitions for a decree enforcing its order.

Concerning the discharge of the two seamen, we consider the proceeding before the Board as conducted with a complete disregard of the body of Congressional safety legislation for the manning, navigation and management of vessels created to protect the lives of the members of the crew. The particular statutes here applicable are later considered, but the titles for the contained enactments for the last 75 years regulating officers and seamen of merchant vessels proclaim the primary purpose of Congress to be the "better security of life on board vessels, etc.," "the better protection of life," "to promote safety at sea," "the further protection of seamen" and "for the protection of such seamen."¹

The Board here seeks to have us hold that the captain of the ocean going steamer "Nevada" should have retained on his ship as boatswain, the general superintendent over the crew (under the licensed officers), one Buckless, a habitual drunkard, who had been elected one of the "Nevada's"

¹Successively these titles are in 16 Stats. 440; 35 Stats. 55; 38 Stats. 1164; 17 Stats. 262, and 30 Stats. 757.

labor leaders. The Board would have us hold this, although the Board itself holds in the same proceeding that Buckless' habitual drunkenness warranted his discharge from the steamer "Washington" less than two months after his discharge from the "Nevada."

The testimony of the "Nevada's" officers of Buckless' drunken habits was uncontradicted and the Board finds that "the evidence does not entirely support" Buckless' denial that his drunkenness interfered with the performance of his duties in superintending the sailors. Instead of giving the officers' testimony the consideration required by the principals stated in *Penninsula and Occidental S. S. Co. v. N. L. R. B.*, 98 F. (2d) 411, 414, cert. den. 305 U. S. 653, apparently no consideration was had of the concept that a ship's captain should eliminate a habitually drunken seaman before his conduct could endanger all on board.

The duties and obligations of the master of the ship in making up and controlling his crew cannot be determined by the study of the management of, say, a great automobile factory. An automobile factory is not a moving mass of steel floating in the ocean, whose propulsion must be controlled by instant intelligent cooperation of commander and his seamen and engineers while driven through a storm or the obscuration of rain, fog or smoke in heavily traveled shipping lanes or in approaching and passing through narrow channels with cross tidal and river currents, or, as for four years from

1914 to 1918 in the Great War, in the zigzag maneuvers of a convoy, or, steaming alone, in avoiding a submarine or dodging a torpedo,—the latter situations not beyond the reasonable contemplation of the Board at the time of the writing of its briefs and of its argument.

Nor is the psychology of the workers in a mill, living in their comfortable homes with their families and with diversions of modern town life, the gauge for the seaman's mind, living in necessarily cramped quarters, though vastly improved now through the pressure of their labor organizations, having 16 hours unoccupied time between watches, without the recreations and diversions which come to men living ashore.

In the life of factory workers are no such dangers as require a maximum of ten years penal servitude for one who by force, fraud or intimidation resists or prevents the master in the free and lawful exercise of his authority,² nor is there need for a maximum two year sentence for assaulting a mill superintendent as there is for assaulting a ship's officer,³ nor for giving a mill superintendent authority to place his employees in irons on bread and water, with full rations only on every fifth day, for continued wilful disobedience of lawful commands or neglect of duty at sea.⁴ The mill manager fires such employees outside the yard gates. The master must

²Criminal Code, § 293; 18 USCA 484.

³46 USCA 701, 6.

⁴46 USCA 701, 5.

have the power to compel the services of such men for the safety of all on board. This distinction between the two employments is the basis of the holding of the Fourth Circuit in *Rees v. United States*, 95 F. (2d) 784, 792.

In our opinion the Board has erred in failing to recognize that these maritime safety laws are paramount to the National Labor Relations Act wherever the Board's proposed orders may increase the danger which the long established safety legislation of Congress seeks to prevent or lessen.⁵

It needs but an extreme illustration to make clear our views of the supremacy of the maritime safety laws to those not familiar (as the Board here appears) with the universal hazards of navigation, and particularly in this case, in the management, in port and at sea, of vessels carrying highly explosive and inflammable cargoes of gasoline and oil. Unlike general cargo vessels, the tanker is subject to the dangers of her peculiar cargo in port as well as at sea. In some respects that menace is heightened in loading and discharging.

Take, for such illustration, the situation of any steamer just leaving dock, at dusk and in hazy weather, to traverse a harbor crowded with moving vessels. There the highest vigilance is required of the lookouts in the bow to warn of the presence and

⁵Dangerous enterprises on land have similar protective legislation involving appraisal of their relationship to the National Labor Relations Act. The highly specialized economic and social life on a ship at sea warrants the consideration here extended.

movements of other vessels, the smartest and most concentrated attention of the helmsman to orders for immediate change of course and of the sailor or officer telegraphing the orders to the engine room for a change of speed or a reverse. If at that moment the two elected representatives of the vessel's labor organization should make a vigorous and disturbing appeal to the lookout, helmsman and man at the engine room telegraph to demand the righting of some claimed wrong in the treatment of the crew, it is apparent that because the two men are labor organizers there is the greater reason for their discharge the moment the safety of the vessel permits. Their organizing power and the prestige of their representative position make their appeal for the righting of grievances, at such a time, the greater menace to the lives of the crew they represent.

If a seaman without the power and prestige of such union authority were to start such a discussion at such a time he probably would be told in seamen's vernacular to "get the hell out of here" and no harm be done. Quite likely in the discipline of the ship, her captain would give such an intruder no more than a vigorous tongue lashing. However, the captain properly would be deprived of his license by the Inspectors in the course of the Congressionally created proceedings⁶ following a collision and a sinking and drowning of some of the sailors caused

⁶46 USCA 239, as amended 41 Stats. 1381, considered *infra*.

by such distracting interference of the labor leaders, if he failed to discharge them and log them as discharged, because of the abuse of their power as such leaders. And this, although the abused power is one the proper exercise of which is protected by the National Labor Relations Act.

It may be said that the above is an occurrence too remote in likelihood to be of illustrative value. To be sure, sober-minded men so would not risk their own lives and those of their mates. But is such a situation unlikely with a labor agitator who is a habitual drunkard and who is shown, by uncontradicted testimony, repeatedly to have boarded his vessel in various intensities of intoxication? In this proceeding it is of outstanding importance that the Board was dealing with a hundred percent labor crew furnished the Texas Company by a C. I. O. union, in which crew, the Board's brief admits, there was "repeated drunkenness" from the drinking which was "especially prevalent."

Indeed, from the condition which the Board found on the "Nevada", it would be over straining human self-control if some of its officers contemplating the command of the vessel in dangerous emergency, with the admitted combination of the unionization of his vessel and the drunkenness of his crew, which had elected a confirmed drunkard as their labor leader, did not sometimes think what one of them said: "Just a minute, there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow

any agitation with the crew on this union business.”⁷ The question here is whether a ship’s captain is deprived of the power to make his ship safe for all the lives entrusted to his care by discharging a drunken boatswain *con amore* because he is a drunken labor leader.

It requires no straining of judicial notice to realize the position of the labor leaders of the crew in the closely knit social organization of the confined area of the vessel, often heated by jurisdictional contests of rival unions. The men elected to represent the crew or a part of it, can make or break the discipline necessary in the vessel’s navigation and management for the safety of everyone on board. In a way they become the social arbiters of their followers. Their example is “an imponderable of the heaviest weight” as a witty Irish M. P. is reported to have put it. There is an old sea saying that “a drunken captain makes a drunken crew.”

⁷Note by Denman, C. J., individually: Lest the inference be drawn that unionization and drunkenness are necessarily connected, it may not be irrelevant for the writer of this opinion to state that he left his practice and from 1919 to 1926 had final authority in the management of a fleet of coastwise vessels operating between Pacific Coast ports. By his choice, and without agreement or negotiation, the crews were one hundred percent unionized,—that form of crew organization seeming to yield the greatest sobriety and efficiency in the fleet’s operations. What the court is considering in this opinion is the Board’s view of the conditions prevailing on one particular vessel.

It well may be equally true of the crew of a ship having a drunken labor leader.

It is a given quantity in a ship captain's command that a varying percentage of his crew over-indulges in intoxicating liquor.⁸ It is a necessary part of his management to exercise a wise discretion in eliminating those who are not fit as lookout or at the wheel or engine room bells because of dullness of mind and nerve response when emerging from intoxication or because actually intoxicated when at station. One false shout from the bow, one failure in instant dropping anchors, one wrong turn of the wheel, or one wrong pull of the telegraph well may send the vessel crashing through the fog into another or on the rocks.

Particularly dangerous are drunkenness and the ensuing dullness in the crew of a gasoline or oil tanker. This court has had occasion to consider the menace of gases coming off oil cargoes in the case of *McGill v. Michigan S. S. Co.*, 144 F. 788, 790, where by a fuel oil gas explosion a steamer was blown in two, with a large loss of life, while lying at dock in San Francisco harbor. The confined spaces of a tanker well may contain such dangerous gases from leakage from her oil compartments. A drunken or drink-dulled man, not realizing the oil gas fumes, may throw his lighted cigarette or match

⁸Cf. The provision for suspending or revocation of officers' licenses for intemperate habits. Captains, 46 USCA 226; *Mates*, id. 228; *Engineers*, id. 229.

or empty his pipe ashes and send everyone to the bottom. With a gasoline cargo drunkenness is an even greater menace. Obviously the menace is further heightened by the presence in the crew of a habitual drunken labor leader, also boatswain, setting the example of intoxication to the men under him.

The exercise of the captain's discretion in the make-up of a crew to afford the safety to all in the hazards of maritime employment cannot well be appraised by the after-wisdom of judges in chambers and officials at their desks. That after-wisdom will not raise a wreck from the bottom of the sea, or resurrect the drowned or explosion-shattered members of a crew.

Congress in its statute of February 28, 1871,⁹ gave to the local boards of inspectors the power to suspend or revoke the licenses of a master who has "endangered life" or has been "guilty of * * * negligence" in the performance of his duties. In present day practice the sailors often are supplied through union or other hiring halls. Nevertheless, a captain is "guilty of * * * negligence" if he fail to see to it that the crew shall be a true "complement" "sufficient" for the safe conduct of the voyage, as required by that Act. Where a crew is not first chosen by the captain, he must promptly weed out any who constitute a menace to his general discipline or to the safe navigation of his ship.

⁹R. S. 4450, now expanded by the Act of May 27, 1936, 49 Stats. 1381, 46 USCA 239.

A crew is not a "complement" or "sufficient" simply because there are enough individuals to fill all the positions required by the United States Inspectors under 46 USCA 222, R. S. 4463, as amended in 40 Stats. 548. This court considered and decided that question with reference to the Chinese crew of the "City of Rio de Janeiro." We denied a limitation of liability to the Pacific Mail Steamship Company because the Chinese, though shown to be excellent sailors, could not understand the commands of the white officers and hence the lifeboats were not launched in sufficient time to save the people on board. Concerning the duty both by the general maritime law and under section 4463 of the Revised Statutes, now 46 USCA 222, we stated and held:

"It is, as was said by Judge Hawley in *Re Meyer* (D. C.) 74 Fed. 885, 'the duty of the owners of a steamer carrying goods and passengers, not only to provide a seaworthy vessel, but they must also provide the vessel with a crew adequate in number, and competent for their duty with reference to all the exigencies of the intended route'; not merely competent for the ordinary duties of an uneventful voyage, but for any exigency that is likely to happen, such, for example, as unfortunately did happen in the present case—the striking of the ship on a reef of rocks—and the consequent imperative necessity for instant action to save the lives of passengers and crew. The duty rested

upon the petitioner to be prepared for such an emergency, not only by reason of the statute cited, but by the general maritime law. In the case of *The Bark Gentleman*, Olcott, 115, Fed. Cas. No. 5,324, it was held that the owners were liable for furnishing an inadequate crew, which they shipped at the Gambia river, West Africa, large enough in numbers, but sick with fever. In *Tait v. Levy*, 14 East, 482, it was held that, where the captain did not know the coast and entered the enemy's port, and was captured, the vessel was "incompetently fitted out," because there was no proper master for the purpose of the voyage. In *Parsons v. Empire Transportation Company*, 111 Fed. 202, 208, 49 C. C. A. 302, we held that, where the owners appointed an incompetent superintendent to manage ships in Alaskan waters, they were not entitled to a limitation of liability for loss arising from sending out a barge in wintry and stormy weather. There can, in our opinion, be no doubt that the crew of a ship must be not only sufficient in numbers, but also competent for the duties it may be called upon to perform. * * *."

In *Re Pacific Mail S. S. Co.*, 130 F. 76, 82.

It is obvious that drunken or drink-dulled sailors on lookout or at the wheel well may be as great a menace as the fever stricken crew on the wrecked bark, "*Gentleman*", or as the Chinese at the life-

boat falls of the "Rio de Janeiro," who could not understand the commands of the officers ordering their launching.

For these reasons we refuse to hold that the habitual drunkard Buckless should have been retained as boatswain to superintend the crew of the "Nevada", or order that the Texas Company make good to him any back pay. We conclude that such an order would not only be in derogation of the efficient enforcement of the Congressional maritime safety laws, but that it would bring discredit to the National Labor Relations Act instead of effectuating its purpose.

With regard to the Board's petition for a restoration of one Rosen, another labor leader on the "Nevada," to the position of quartermaster (helmsman), it is apparent that the issue of the propriety of his discharge was tried by a Board having a misconception of the captain's duty and obligation to all on the vessel with regard to their safety. It appears that after Buckless' discharge, Rosen, as labor leader, proceeded to agitate among the seamen against the captain for his entirely justifiable action. Nothing could be more disruptive of the necessary respect due the captain's proper decision in matters of ship discipline. The fact that Rosen was a labor leader heightened the wrong. During Rosen's active leadership there had been threats of an illegal sit-down strike of the crew because there was among them one member of the International Seaman's Union. There was

a jurisdictional dispute between his C. I. O. union and the I. S. U. and Rosen used the structure of the vessel itself to display on her side a large C. I. O. banner as she came into port. A labor leader so actively engaged in jurisdictional and other agitation among the crew, in part highly improper and in part justified, well may have been absent from his station and inattentive to his duties, as testified by the ship's officers. Cf. *Penninsula and Occidental S. S. Co. v. National Labor Relations Board*, *supra*. It is of note that three other active labor leaders not shown to have engaged in conduct subversive to the ship's necessary discipline remain as members of the crew.

Since the entire proceeding was conducted with such an ignoring of the long established Congressional legislation for the protection of life at sea and with such a misconception of the powers of a ship's officers and managers necessary in such protection, we deem it for the best interests of the participating parties and for labor legislation generally to remand to the now reconstructed¹⁰ Board the proceedings leading to those portions of the Board's order, other than that concerning the discharge and back pay of Buckless, for a reconsideration—having in view this opinion. *Ford Motor Company v. National Labor Relations Board*, 305 U. S. 364, 373; *National Labor Relations Board v. Cowell Portland Cement Co.*, 108 F. (2d) 198, 206

¹⁰Cf. Opinion of Mr. Justice Frankfurter in *Graves v. N. Y. ex rel. O'Keefe*, 306 U. S. 466, 487.

(CCA-9); *National Labor Relations Board v. Sterling Electric Motors, Inc.*, 118 F. (2d) 893, 897 (CCA-9), decided March 14, 1941.

We deny enforcement of the order so far as it concerns the discharge and back pay of Buckless.

WILLIAM DENMAN

United States Circuit Judge

CLIFTON MATHEWS

United States Circuit Judge

.....

United States Circuit Judge

Stephens, Circuit Judge (Specially concurring in part and dissenting in part).

I concur in the denial of enforcement of the National Labor Relations Board's order so far as it concerns the discharge and back pay of Buckless, and base my concurrence generally upon the intemperance of this seaman. However, since I am unable to agree completely with the majority opinion upon this subject I confine my concurrence to the result reached.

I believe the order should be enforced as to all other issues and register my dissent as to the conclusions reached by my associates in regard thereto.

ALBERT LEE STEPHENS

U. S. Circuit Judge

[Endorsed]: Filed May 23, 1941.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9518.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL MARITIME UNION OF
AMERICA,

Intervener.

DECREE

The Texas Company having petitioned this Court on May 7, 1940, to review the order of the National Labor Relations Board herein, entered on January 24, 1940, and the said National Labor Relations Board having filed on Jun 26, 1940, its answer to said petition for review, and its request for enforcement of its said order, and the National Maritime Union of America having been granted permission on June 10, 1940, to intervene in this proceeding, and upon consideration of the foregoing, and of the certified transcript of record transmitted by said National Labor Relations Board,

It Is Ordered, Adjudged and Decreed by this Court that the petition for enforcement of the said Order of the said National Labor Relations Board be, and hereby is denied so far as it concerns the

discharge and back pay of Clarence Buckless; and that this cause be, and hereby is remanded to the said National Labor Relations Board for reconsideration, in accordance with the views expressed in the opinion of this court, of the proceedings leading to those portions of the Board's order, other than that concerning the discharge and back pay of Buckless.

A true copy:

Attest: June 13, 1941.

PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Decree filed and entered May 23, 1941.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD TO SUPPLEMEN-
TAL TRANSCRIPT OF RECORD

The National Labor Relations Board, by its Executive Secretary, duly authorized by the National Labor Relations Board, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board in accordance with the opinion of this Court dated May 23, 1941, entitled, "In the Matter of The Texas Company, Marine Division, and National Maritime Union, Port Arthur Branch," the same being Case No. C-1276 before said Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order vacating order and directing reargument before the National Labor Relations Board, dated June 28, 1941, together with an affidavit of service thereon.

(2) Copy of petitioner's letter of July 3, 1941, requesting permission to file a brief.

(3) Copy of Board's letter of July 8, 1941, granting permission to file brief.

(4) Copy of findings of fact, conclusions of law and decision and order of the National Labor Relations Board, dated July 18, 1942, together with an affidavit of service thereon.

In Testimony Whereof the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 8th day of October 1942.

[Seal]

BEATRICE M. STERN,

Executive Secretary

National Labor Relations

Board

United States of America
Before the National Labor Relations Board
Case No. C-1276

In the Matter of

THE TEXAS COMPANY, MARINE DIVISION

and

NATIONAL MARITIME UNION, PORT
ARTHUR BRANCH

ORDER VACATING ORDER, AND DIRECT-
ING REARGUMENT BEFORE THE NA-
TIONAL LABOR RELATIONS BOARD

The Board having issued its Decision and Order herein on January 24, 1940, and, thereafter, the Texas Company having filed a petition in the United States Circuit Court of Appeals for the Ninth Circuit to review and set aside the aforesaid Order, and the Court having duly considered the matter, and on May 23, 1941, entered its decree setting aside the aforesaid Order as to Clarence Buckless and remanding the proceeding to the Board for reconsideration, and the Board having duly considered the matter,

It Is Hereby Ordered that the Order of the National Labor Relations Board issued herein on January 24, 1940, with the exception of paragraph 2 (a) thereof, be, and it hereby is, vacated and set aside; and

It Is Further Ordered that a hearing be held

before the National Labor Relations Board on Thursday, July 17, 1941, at 10:30 a. m. E.S.T., in Room 326, Shoreham Building, Fifteenth and H Streets, N. W., Washington, D. C., for the purpose of reargument and reconsideration in accordance with the opinion of the United States Circuit Court of Appeals dated May 23, 1941.

Dated, Washington, D. C., June 28, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia—ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 28th day of June 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Order Vacating Order, and Directing Reargument Before the National Labor Relations Board; and letter of transmittal to the following named persons, addressed to them at the following addresses: The Texas Company, Marine Division

Port Arthur, Texas. 69816

A. E. Van Dusen, Esq.

135 East 42nd St.

New York, N. Y. 69817

J. W. Williams and James H. Pipkin
The Texas Company Bldg.
Port Arthur, Texas. 69818

Mandell & Combs
Att: Herman Wright & W. A. Combs, Esqs.
417 Shell Bldg.
Houston, Texas. 69819

Max Lustig, Esq.
291 Broadway
New York, N. Y. 69820

VERNON S. GREEN

Subscribed and sworn to before me this 28th day
of June 1941.

[Seal] IRVING HELBLING
My commission expires Sept. 2, 1945.

(Copy)

THE TEXAS COMPANY
Legal Department
135 East 42nd Street, New York

July 3, 1941

The Texas Company
Case No. C-1276

Mr. Howard F. LeBaron
Executive Assistant,
Field Division,
National Labor Relations Board,
Shoreham Building,
Washington, D. C.

Dear Sir:

This will acknowledge receipt of your letter of June 28th enclosing an order of the Board setting the above matter down for a further hearing on Thursday, July 17, 1941.

This is to advise you that I desire to appear and participate in the argument at this hearing. One-half hour will be ample time to make my argument.

In addition to the time allowed for oral argument, I should also like the Board's permission to file a short brief in support of my contentions. It will be appreciated if you will advise me if this privilege is granted me.

Very truly yours,
s/ ALBERT E. VAN DUSEN,

AEVD:LCT

Attorney.

8 July 1941

Albert E. Van Dusen, Esq.
Legal Department, The Texas Company
135 East 42nd Street
New York, N. Y.

Re: The Texas Company
Case No. C-1276

Dear Sir:

This will acknowledge your letter of July 3, advising that you will represent the Respondent at the hearing scheduled for Thursday, July 17, 1941, in the above noted case.

Pursuant to your request for permission to file brief herein, please be advised that you are hereby granted until July 17, 1941 for the filing thereof. This privilege is extended all parties to the proceeding.

Very truly yours,
ESTELLE S. FRANKFURTER
Administrative Assistant

ESF:ANC:hsb

CC—J. W. Williams and James H. Pipkin

The Texas Company Bldg.

Port Arthur, Texas

Mandell & Combs

Att: Herman Wright & W. A. Combs,
Esqs.

417 Shell Bldg.

Houston, Texas

Max Lustig, Esq.

29 Broadway

New York, N. Y.

United States of America
Before the National Labor Relations Board
Case No. C-1276

In the Matter of

THE TEXAS COMPANY, MARINE DIVISION

and

NATIONAL MARITIME UNION, PORT
ARTHUR BRANCH

Mr. E. P. Davis and Mr. Alba Burnham Martin,
for the Board.

Mr. A. E. Van Dusen, of New York City, Mr.
James H. Pipkin, of Houston, Tex., and Mr.
J. W. Williams, of Port Arthur, Tex., for the
respondent.

Mandell & Combs, by Mr. Herman Wright, Mr. W.
A. Combs, Mr. Arthur J. Mandell, and Mr.
Otto Mullinax, of Houston, Tex., and Mr. Max
Lustig, of New York City, for the Union.

Mr. Robert R. Hendricks and Mr. Edward J.
Creswell, of counsel to the Board.

DECISION AND ORDER
STATEMENT OF THE CASE

Upon amended charges duly filed by National
Maritime Union of America,¹ Port Arthur Branch,
herein called the Union, the National Labor Rela-
tions Board, herein called the Board, by the Re-

¹Incorrectly designated in the complaint and other
formal papers as "National Maritime Union."

gional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated September 3, 1938, against The Texas Company, Marine Division, New York City and Houston, Texas, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent discharged and thereafter refused to reinstate 10 of its employees² for the reason that they, and each of them, joined and/or assisted the Union and engaged in concerted activities with other employees

²The complaint listed the employees allegedly discharged, the dates of the alleged discharges, and the ships from which they took place, as follows: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. G. MacClennan, April 17, 1938, S. S. Rhode Island; C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewicz, July 14, 1938, S. S. Washington; C. Buckless, July 14, 1938, S. S. Washington; J. Gordon Rosen, July 14, 1938, S. S. Washington; James P. Blasingame, September 19, 1937, S. S. California; Arthur Spencer, September 19, 1937, S. S. California; J. Gordon Rosen, September 19, 1937, S. S. California; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke.

of the respondent for the purposes of collective bargaining and other mutual aid and protection, thereby discriminating in regard to the hire and tenure of employment of these employees and discouraging membership in the Union; that, since on or about August 1, 1937, the respondent, through its officers, agents, and employees, has made various statements to its employees discouraging affiliation in, or activity on behalf of, the Union; that, through its officers, agents, and employees, the respondent has denied passes to representatives of the Union to board the respondent's vessels in order to meet with members of the Union, and that, by the aforementioned and other acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On September 12, 1938, the respondent filed its answer and its amended answer to the complaint, in which it denied having engaged in any unfair labor practices, but admitted that certain of the employees named in the complaint had been discharged and refused reinstatement.³ In its amended

³The respondent admitted in its amended answer that it had, on the dates given, discharged the following employees from the following named ships; C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewicz, July 14, 1938, S. S. Rhode Island; J. Gordon Rosen, July 14, 1938, S. S. Washington; C. T. Adams, July 30, 1938, S. S. Roanoke; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. Buckless, July 14, 1938, S. S. Washington.

answer the respondent also admitted that it had denied passes to representatives of the Union to board its vessels, but averred that such denial had not been discriminatory.

Pursuant to notice, a hearing was held at Port Arthur, Texas, from September 12 through September 22, 1938, before Howard Myers, the Trial Examiner duly designated by the Board. The hearing was continued at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing, counsel for the Board moved to amend the complaint to include an allegation that the respondent discharged and refused to reinstate 2 men⁴ not previously named therein for the reason, among others, that they had joined and/or assisted the Union. The Trial Examiner granted the motion without objection. With the consent of all the parties, the respondent's answer was deemed amended to include a denial of the allegation that these 2 men were discharged in

⁴The names of these employees, the dates of the alleged discharges, and the ships from which they took place are: Rufus H. Andrews, July 8, 1938, S. S. Australia; Jack Wilson, March 17, 1938, S. S. Washington.

violation of the Act. During the course of the hearing, counsel for the Board moved to dismiss the allegations in the amended complaint as to certain discharges of 7 of the 12 employees named.⁵ The Trial Examiner granted the motion, which was not opposed. Also during the course of the hearing the respondent made various motions to dismiss the amended complaint in its entirety; to dismiss that portion of the amended complaint which alleged that Rufus H. Andrews and F. W. Zinkiewicz were discharged by the respondent on July 8 and July 14, 1938, respectively, because they had joined and/or assisted the Union; and to strike certain testimony. Decision on these motions was reserved by the Trial Examiner at the hearing. In his Intermediate Report, the Trial Examiner⁶ denied the motions to dismiss the amended complaint in its entirety and the motions to strike certain testimony, but granted the motions to dismiss the amended complaint as to Rufus H. Andrews and F. W. Zinkiewicz. At the close of the hearing,

⁵These seven discharges involved the following employees who were alleged to have been discharged on the following dates from the following ships: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. G. MacClennan, April 17, 1938, S. S. Rhode Island; Arthur Spencer, September 19, 1937, S. S. California; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke; Jack Wilson, March 17, 1938, S. S. Washington.

⁶The Intermediate Report was submitted by Trial Examiner Howard Myers.

counsel for the Board moved to conform the complaint to the proof. This motion was granted by the Trial Examiner. During the course of the hearing the Trial Examiners made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiners and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On May 8, 1939, Trial Examiner Myers filed an Intermediate Report, copies of which were duly served on the parties, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices; that it reinstate with back pay 4 of the 12 employees originally named in the amended complaint; and that it take certain affirmative action to remedy the situation brought about by the unfair labor practices. He dismissed the allegations of the complaint, as above stated, with respect to Rufus H. Andrews and F. W. Zinkiewicz. The respondent filed a Statement of Exceptions to the Intermediate Report and to the record on July 14, 1939, and a brief in support of the Statement of Exceptions on July 17, 1939.

Pursuant to notice duly served upon the respondent and upon the Union, a hearing for the purpose of oral argument was held on October 24, 1939,

before the Board in Washington, D. C. The respondent and the Union were represented by counsel and participated in the argument.

On January 24, 1940, the Board issued a Decision and Order in the case.⁷ The Board found in its Decision that the respondent, by warning its employees against union organization and by other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) thereof; and that the respondent, by discharging Clarence Buckless on April 18, 1938, and J. Gordon Rosen on April 19 and July 14, 1938, and thereafter refusing to reinstate them, because of their union affiliation and activities, engaged in unfair labor practices within the meaning of Section 8 (3) and (1) of the Act. The Board ordered the respondent to reinstate Rosen with back pay, and awarded back pay to Buckless whom the respondent had already reinstated.

On May 7, 1940, the respondent filed a petition for review of the Board's Decision and Order in the United States Circuit Court of Appeals for the Ninth Circuit, and on June 24, 1940, the Board filed an answer requesting enforcement of its Order. Upon briefs filed by the respondent and the Board, and after oral argument in which the respondent

⁷Matter of The Texas Company, Marine Division and National Maritime Union, Port Arthur Branch, 19 N.L.R.B. 835.

and the Board participated by counsel, the Court, on May 23, 1941, entered its opinion and a decree denying enforcement of the Board's Order as to Buckless and remanding the remaining portions of the Order to the Board for reconsideration in the light of certain maritime safety statutes to which the Court adverted in its opinion.

On June 28, 1941, the Board vacated and set aside its Decision and Order of January 24, 1940, with the exception of paragraph 2 (a)⁸ thereof. Pursuant to notice duly served upon the respondent and the Union, a hearing for the purpose of reargument was held before the Board in Washington, D. C., on July 17, 1941. The respondent and the Union were represented by counsel and participated in the argument, and the respondent then filed a brief which the Board has considered.

Upon the entire record, and pursuant to the remand of the United States Circuit Court of Appeals for the Ninth Circuit, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent, The Texas Company, a wholly owned subsidiary of The Texas Corporation, is a Delaware corporation, with its principal business

⁸In this paragraph back pay was awarded Buckless. As noted above, enforcement of the Board's Order as to Buckless was denied by the Circuit Court of Appeals.

and executive offices located at New York City and Houston, Texas. It is engaged chiefly in the production, distribution, and sale of petroleum and petroleum products. The respondent operates refineries in Texas at Galena Park, Port Arthur, and Port Neches. In addition, at Port Neches, it operates a factory for the manufacture of roofing materials, barrels, and various other products.

Chief products of the Galena Park refinery are gasoline and fuel oils. The crude oil used in their manufacture comes principally from producing wells in Texas and New Mexico through pipe lines operated by the Texas New Mexico Pipe Line Company. This company is a common carrier with tariffs prescribed by the Interstate Commerce Commission. A majority of its stock is owned by The Texas Corporation. The average daily throughput of the Galena Park refinery is approximately 20,000 barrels of crude oil. Of the finished products, approximately 75 percent is shipped out of Galena Park on board seagoing tankers to points outside the State of Texas.

The principal products manufactured at the respondent's Port Neches works are roofing, asphalt, steel barrels, wood barrels, and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper, and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude oil is obtained from Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico. All

of the felt, slate, sheet steel, and paper is procured from outside the State of Texas.

The unfinished crude distillates from both the Galena Park and Port Neches refineries are pumped to the respondent's Port Arthur refinery where the refining process is completed. In refined form, a substantial percentage of the crude-oil distillates pumped to Port Arthur eventually reaches a destination outside the State of Texas.

Products of the respondent are, in part; distributed through 2,100 wholesale outlets and over 40,000 retailers located in most of the States of the United States. Gross receipts of the respondent for the fiscal year ending December 31, 1937, were in excess of \$280,000,000. In the respondent's franchise-tax return to the Secretary of State of Texas, covering the year 1937, over 86 per cent of its business was reported as interstate in character and approximately 13 percent was reported as intrastate.

The respondent owns, maintains, and operates through its Marine Division approximately 28 oceangoing vessels having an average capacity of 11,000 tons. These vessels are used by the respondent in transporting its petroleum products between various ports in the Gulf of Mexico and other ports of the United States, and to and from Europe, South America, and other points.

II. The organization involved

National Maritime Union of America, Port Arthur Branch, is a labor organization affiliated

with the Congress of Industrial Organizations. It admits to membership all unlicensed seamen employed by the respondent.

III. The unfair labor practices

The Board, in its original Decision, dismissed the complaint insofar as it alleged that the respondent had refused to issue passes to union representatives, in violation of Section 8 (1) of the Act, and that the respondent had discriminated in regard to the hire and tenure of employment of Rosen and Blasingame by discharging them from the S. S. California during September 1937, of Lortie, Zinkiewicz, and Andrews, by discharging them from the S. S. Roanoke, S. S. Australia, and S. S. Washington during July 1938, and of Buckless by discharging him from the S. S. Washington on July 14, 1938, in violation of Section 8 (3) and (1) of the Act.⁹ Since those sections of the Board's original Decision dealing with the dismissed allegations of the complaint were not the basis of any part of the Board's Order which was before the Court on the petition for review, they are not within the scope of the Court's remand and will not, therefore, be reconsidered.

A. Interference, restraint, and coercion

Both J. Gordon Rosen and James P. Blasingame were hired by the respondent on or about June 30, 1937, at Port Arthur, Texas, and were assigned to the S. S. California as able-bodied seaman and quartermaster, respectively.

⁹19 N.L.R.B. 835.

When Rosen went on board, he reported for duty to Earl Baldwin, then acting first mate of the S. S. California. According to Rosen's account of the ensuing conversation, Baldwin stated to him, "Just a minute, there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business." Blasingame gave a similar account of his first conversation with Baldwin. He testified that, when he boarded the S. S. California, Baldwin warned him against three things: "drunkenness," "missing watches," and "union agitating."

Soon after Rosen and Blasingame went to work on the S. S. California, its regular first mate, Dave Rosen, returned to the ship from a leave of absence, and Earl Baldwin was shifted back to his regular position as second mate. As such, Baldwin was in charge of the 12 to 4 watch during which Blasingame, as quartermaster, steered the ship.

In the course of their duties, Blasingame and Baldwin were frequently on the bridge together and engaged in various conversations. Concerning these conversations, Blasingame testified that Baldwin told him how the ship had been run without union men aboard and how he (Baldwin) had to get rid of a man "because he was agitating union all the time." On one occasion, according to Blasingame, a newly hired seaman came aboard wearing a union button. Baldwin, upon seeing it, remarked, "There is a man who won't ride this ship long." At an-

other time, Blasingame testified, Baldwin asked him if a certain new seaman was a "rank and file."¹⁰ Blasingame replied that he did not know, and Baldwin said, "Well, if he is he won't be on this ship very long."

Blasingame also testified that Baldwin asked him about his own union affiliation as well as that of various other crew members, including J. Gordon Rosen. Blasingame avoided giving a direct answer to the question as to his own membership in the Union, he testified, and told Baldwin that he knew nothing about the membership of the others.

On the termination of this voyage, both Blasingame and J. Gordon Rosen left the ship. When J. Gordon Rosen was being paid off, Baldwin commented on Rosen's termination of employment as follows: "Well, you know we don't want any agitating back there."

Baldwin testified that, when J. Gordon Rosen and Blasingame first boarded the S. S. California, he simply told them to go to their quarters. He denied warning them against "union agitation." Although he admitted having had, as second mate, various conversations with Blasingame, he flatly denied each and every anti-union statement attributed to him by the latter. Trial Examiner Myers, before whom Baldwin testified, did not credit Baldwin's denials, nor do we. We find that Baldwin made

¹⁰During the first stages of its organization, and for some time thereafter, the Union was commonly referred to as the "rank and file."

the statements attributed to him by J. Gordon Rosen and Blasingame, substantially as recited above.

As acting first mate on the S. S. California when J. Gordon Rosen and Blasingame were hired and when he warned them against "union agitation," Baldwin was second in authority only to the captain. As second mate at the time of his various conversations with Blasingame on the bridge of the S. S. California, Baldwin was the third ranking officer on the ship. During the absence of his superior officer or officers, Baldwin was in complete charge of the ship. He was at all times in charge of the deck crew during one watch of 8 hours each day. The respondent is clearly accountable for the anti-union statements made by him.¹¹

We find that the respondent, by warning its employees against union organization, by threatening the discharge of union members, and by questioning an employee concerning the identity of union members, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The shipping articles

As stated above, the amended complaint charges the respondent with having discharged and refused

¹¹Cf. *Virginia Ferry Corporation v. National Labor Relations Board*, 101 F. (2d) 103 (C.C.A. 4), enf'g as mod. *Matter of Virginia Ferry Corporation*, 8 N.L.R.B. 730.

to reinstate various employees, in violation of Section 8 (3) of the Act.

It is undisputed that each seaman involved in the alleged discharges, which are discussed below, signed shipping articles required by law,¹² and that each received his discharge certificate¹³ at the port at which he had originally embarked. The respondent contends that there is and can be no issue of unlawful discharge in this proceeding, because the shipping articles constituted contracts of employment under which the employment relationship was terminated, as a matter of law, at the end of the particular voyages concerned.

We do not concur in this view. It is clear from the record that the termination of a voyage does not, as a matter of fact, terminate the employment relationship between the respondent and the members of the crew. With the exception of those seamen who either quit or are dismissed, the crew continues in the performance of its duties. Regular watches are maintained and the seamen remain subject to the orders of their ship's officers. Ordinarily the same crew goes on the succeeding voyage.

Despite the fact that seamen may have concurrently signed shipping articles for a voyage, the respondent may dismiss them on different days upon or after the end of the voyage, thus indicat-

¹²46 U.S.C.A., Sec. 564; 46 U.S.C.A., Sec. 574.

¹³In the event that a seaman quits a particular vessel or is dismissed for any reason, the law requires that he be given a discharge certificate. 46 U.S.C.A., Sec. 643.

ing that it is the dismissal by the respondent's officers rather than the completion of the voyage which terminates the employment relationship. Furthermore, the respondent's working rules provide that "all unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay," and that "those in continuous service for two years or more shall be given an annual vacation of two weeks with pay." Since shipping articles signed by the respondent's seamen are never for voyages lasting as long as a year, these provisions of the working rules would be meaningless if, as the respondent contends, the employment relationship ended upon the completion of each voyage.

On the basis of all the evidence, we find that, notwithstanding termination of a particular voyage, the employee relationship of each member of the crew on the respondent's ships here involved continued until he quit or until he was dismissed for lawful cause.¹⁴

¹⁴South Atlantic Steamship Company of Delaware v. National Labor Relations Board, 116 F. (2d) 480 (C.C.A. 5), enf'g mod. Matter of South Atlantic Steamship Company of Delaware, 12 N.L.R.B. 1367, cert. denied, 313 U. S. 582; National Labor Relations Board v. Waterman Steamship Corporation, 309 U. S. 206, rev'g 103 F. (2d) 157 (C.C.A. 5), mod. Matter of Waterman Steamship Corporation, 7 N.L.R.B. 237. See Southern Steamship Company v. National Labor Relations Board, 62 S.Ct. 886, rev'g and rem'd'g 120 F. (2d) 505 (C.C.A. 3), enf'g as mod. Matter of Southern Steamship Company, 23 N.L.R.B. 26.

C. The discharge of J. Gordon Rosen from the S. S. "Nevada".

On January 10, 1938, J. Gordon Rosen was again hired by the respondent and was assigned to the S. S. Nevada as an able-bodied seaman. When Rosen boarded the S. S. Nevada he found that the entire crew, with the exception of one man, was composed of members of the Union.

Rosen at once became active in affairs of the Union. He presided over meetings held in the crew's quarters each week and acted as a delegate to discuss various controversial grievances with the ship's officers. He drafted a letter, copies of which the crew sent through the mails and hiring halls to crews of the respondent's other ships, urging them to join the Union. It is clear that Rosen was outstanding as an active union leader on board the S. S. Nevada, and that the ship's officers were aware of his activity.

On April 18, 1938, when the S. S. Nevada docked at Port Arthur, Buckless was discharged by Captain Swanson. Rosen, as crew delegate, immediately protested Buckless' discharge to First Mate Tranberg and was, in turn, discharged on the following day. Tranberg, in answer to Rosen's request for an explanation of his discharge, stated, "Well, it might be for the reason that your work is not satisfactory."

The respondent contends that Rosen's employment was terminated because he was lazy and inattentive to duty. Tranberg testified that Rosen seemed to "intentionally lag behind in his work,"

and that on various occasions he left his post when he was supposed to be on watch and went aft to play cards, write, or smoke. Captain Swanson testified that Rosen appeared to be "purely lazy" and that Tranberg had often complained about his work. Rosen denied that he had been derelict in the performance of any of his duties. It is clear, and we find, that he did not use tobacco. The respondent's charge of neglect of duty on the part of Rosen is also refuted by Rosen's long record at sea,¹⁵ and his previous admittedly satisfactory service with the respondent as quartermaster on the S. S. Nevada in 1935, and as temporary boatswain on the S. S. California in 1937.¹⁶

¹⁵At the time of the hearing, Rosen had had 10 years' experience as a seaman.

¹⁶As discussed below, less than a month and a half after Rosen had received his discharge papers from the S. S. Nevada, he was rehired by the respondent on the S. S. Washington. In its brief and at the oral argument, the respondent urged that the fact that Rosen was rehired demonstrates that he had not been discharged from the S. S. Nevada because of his activity in the Union. We do not believe that this argument resolves any of the issues. It might equally well be urged that the respondent would not have rehired Rosen, as it did, if he was in fact negligent and lazy. The record indicates that, insofar as the hiring of unlicensed seamen is concerned, each of the respondent's ships was operated largely as a separate unit, obtaining its employees from any of various uncoordinated agencies. A man might therefore be discharged from one of the respondent's ships and thereafter be rehired on another, the rehiring having little or no bearing upon the merits of, or the reasons for, the previous discharge.

We believe that the reasonable resolution of this conflicting testimony, as well as the respondent's reason for discharging Rosen, is revealed by the testimony of Leo Herman and George Hart. Herman, who was not a member of the Union, was hired as a seaman on the S. S. Nevada on April 19, 1938, some hours after Buckless' dismissal but before Rosen's discharge. Rosen and other union members voiced strenuous objection to Herman's employment, because of his non-union status. Herman reported this to Tranberg, who questioned him as to the identity of the objectors. Herman testified that, when he refused to divulge this information, Tranberg remarked:

I know who you had the conversation with. It was Baldy.¹⁷ Baldy is a good man but he let the Union go to his head. We had a boatswain on here; he done the same thing. Every time a [new] man comes on board he asked him if he had a union book.

Nine days later, Tranberg told Herman, according to the latter's testimony, that:

he [Tranberg] fired Baldy on account of union activities but that is not the reason he gave him * * * the only reason he [Tranberg] told me was that I told him I didn't belong to the N.M.U. * * *

Quartermaster Hart of the S. S. Nevada corroborated the first of these two conversations, which

¹⁷Rosen was commonly called "Baldy."

he had overheard, and testified that, prior to Rosen's discharge, when Tranberg was investigating the crew's opposition to Herman's employment, he directed Hart to

tell those people I don't want none of that kind of stuff on here. I am not going to have it. I thought I got rid of that when I got rid of that fellow yesterday.

Hart testified that Tranberg's allusion to "that fellow" was to Boatswain Buckless, who had been discharged on the previous day. It is apparent from Tranberg's remark that further punitive measures were contemplated at that time. Tranberg denied the statements attributed to him by Herman, but did not testify as to his conversation with Hart. On the entire record, we credit the testimony of Herman and Hart, and we find that the respondent discharged J. Gordon Rosen from the S. S. Nevada because of his union membership and activities, thereby discriminating in regard to his hire and tenure of employment, discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The discharge of J. Gordon Rosen from the S. S. "Washington."

J. Gordon Rosen was unemployed from the time he left the S. S. Nevada until June 1, 1938, when he was rehired by the respondent as an able-bodied seaman on the S. S. Washington. As in the case of his previous employment with the respondent, Rosen

became outstandingly active in the affairs of the Union soon after his arrival on the ship. He presided over meetings and was elected a delegate. In that capacity, from time to time, he presented various grievances of the crew to Captain Bergman of the S. S. Washington. Bergman told Rosen that the respondent "didn't recognize any union," but discussed the various grievances with him. On July 11, 1938, Rosen drafted and signed an open letter from the crew of the S. S. Washington to the crews of all other ships owned by the respondent, urging them to organize and severely criticizing the respondent because it allegedly refused to improve the working conditions of its employees. Rosen also sent a telegram to J. P. Roney, general manager of the respondent's marine department, complaining that the captain of the S. S. Washington refused to recognize the delegates of the Union. It is clear that the officers of the S. S. Washington had knowledge of Rosen's activity on behalf of the Union.

On July 14, 1938, at Port Arthur, the first mate, C. B. Johannesen, told Rosen that he was "fired" because of "unsatisfactory seamanship." This occurred a few hours after Rosen, as delegate of the Union, had taken up an overtime dispute with C. L. Hand, the port captain, who refused to recognize him as union delegate. Rosen protested his discharge to First Mate Johannesen, who thereupon withdrew his original reason for Rosen's discharge and admitted that he had nothing against Rosen's seamanship. Johannesen then told Rosen that his slowness at work was the reason for his discharge.

Captain Bergman and Mate Johannesen testified that Rosen on various occasions was negligent and lazy. On the other hand, there is substantial evidence to the contrary. Furthermore, several of the instances of laziness attributed to Rosen by Mate Johannesen occurred, according to the latter's own testimony, during the first voyage of the S. S. Washington, after which Rosen was shipped on the second voyage. We are not convinced that this was done, as the respondent contends, merely to give Rosen "another chance." In view of Rosen's long experience as a seaman and his previous satisfactory record with the respondent, we find, as did the Trial Examiner, that neither Bergman's nor Johannesen's testimony as to Rosen's negligence and laziness is entitled to credence. The notation made by Captain Bergman in the crew list, that Rosen was discharged for "incompetency," is, in our opinion, no more persuasive than the testimony given by Bergman at the hearing.

On the basis of the entire record, we find, as did the Trial Examiner, that the respondent discharged Rosen from the S. S. Washington on July 14, 1938, and thereafter refused to reinstate him, because of his union membership and activities, thereby discriminating in regard to his hire and tenure of employment, discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. Marine Safety Legislation.

Pursuant to the decree of the Circuit Court of Appeals, we have carefully reconsidered our findings as to the respondent's unfair labor practices in the light of the Court's opinion and of the traditional need for safety and discipline aboard ship. We appreciate the importance of the legislation to which the Court refers in its opinion¹⁸ and recognize our task of accommodating the "scheme" of the Act to "other and equally important Congressional objectives." We take note that the amendments to the Merchant Marine Act of 1936 (49 Stat. 1985) enacted by Congress in 1938 (52 Stat. 965, 46

¹⁸This legislation, briefly summarized, is as follows:

18 U.S.C.A., Sec. 484, Article 293: provides a fine and imprisonment for a member of a crew unlawfully and by force, fraud, or intimidation, to usurp the command of a vessel from its master.

46 U.S.C.A., Sec. 701, Articles Fifth and Sixth: provide for the punishment of a crew member for continued willful disobedience or neglect of duty at sea; and for assaulting a master, mate or other officer.

46 U.S.C.A., Sec. 239: provides that inspectors shall investigate all acts of misconduct committed by any licensed officer, whose license shall be suspended if the inspectors are satisfied after a hearing that the officer is incompetent or has been guilty of misbehavior, negligence, or unskilfulness, or has endangered life wilfully.

46 U.S.C.A., Secs. 226, 228, 229: provide that licenses of captains, mates, and engineers shall be suspended on satisfactory proof of intemperate habits.

46 U.S.C.A., Sec. 222: requires that a vessel shall only be operated with a full complement of officers and crew, and provides that a captain is liable to fine or penalty for failing to explain to the local inspectors the reason for any deficiency in complement.

U.S.C.A., Secs. 1251-1262) added to that Act a title on maritime labor relations declaring a policy of encouraging collective bargaining among maritime employees and affirming the applicability of the National Labor Relations Act to them.¹⁹ Seamen who have engaged in conduct condemned as illegal by other legislation have indeed been denied reinstatement under the Act,²⁰ but our own decisions and those of the courts have frequently and consistently recognized the general applicability of the Act to maritime employees.²¹

¹⁹This affirmation of the applicability of the Act is contained in Section 1002 of the Merchant Marine Act, which was added in June 1938 by 52 Stat. 965, 46 U.S.C.A., Sec. 1252. The 1938 amendments originally were to expire in 3 years, on June 23, 1941, but the life of some of the sections added by these amendments, including Section 1002, was extended until June 23, 1942, by Public L. No. 124, 77th Cong., 1st Sess.

²⁰*Southern Steamship Company v. National Labor Relations Board*, 62 S.Ct. 886, rev'g and rem'd'g 120 F. (2d) 505 (C.C.A. 3), enf'g as mod. *Matter of Southern Steamship Company*, 23 N.L.R.B. 26.

²¹See, e. g., *National Labor Relations Board v. Waterman Steamship Corporation*, 309 U.S. 206, rev'g 103 F. (2d) 157 (C.C.A. 5), mod. *Matter of Waterman Steamship Corporation*, 7 N.L.R.B. 237; *Black Diamond Steamship Corporation v. National Labor Relations Board*, 94 F. (2d) 875 (C.C.A. 2), enf'g *Matter of Black Diamond Steamship Corporation*, 3 N.L.R.B. 84, cert. denied, 304 U.S. 579; *South Atlantic Steamship Company of Delaware v. National Labor Relations Board*, 116 F. (2d) 480 (C.C.A. 5), enf'g as mod. *Matter of South Atlantic Steamship Company of Delaware*, 12 N.L.R.B. 1367, cert. denied, 313 U.S. 582.

Protection by law of the right to organize and bargain collectively has also been extended by Congress to employees engaged in other hazardous occupations. Railroad employees and employees of common carriers by air, although employed in industries covered by extensive safety legislation, have, for example, expressly been given guarantees in the Railway Labor Act substantially similar to those contained in the National Labor Relations Act. Similarly, although the hazardous nature of the mining industry has long been recognized in safety legislation, the applicability of the National Labor Relations Act to mining employees is well-established.²²

Certainly it cannot with reason be said that ship's officers must be permitted to engage in anti-union conduct and statements if safety and discipline aboard ship are to be preserved. Any such holding would in effect mean that normal union activities create otherwise non-existent dangers and interfere with discipline and good order. Experience provides no basis for any such proposition. On the con-

²²See, e. g., *Matter of Crowe Coal Company and United Mine Workers of America*, District No. 14, 9 N.L.R.B. 1149, enf'd in *National Labor Relations Board v. Crowe Coal Company*, 104 F. (2d) 633 (C.C.A. 8), cert. denied, 308 U.S. 584; *Matter of Nevada Consolidated Copper Corporation and International Union of Mine, Mill and Smelter Workers*, 26 N.L.R.B. 1182, set aside in *National Labor Relations Board v. Nevada Consolidated Copper Corporation*, 122 F. (2d) 587 (C.C.A. 10), rev'd, 62 S.Ct. 960.

trary, Congress has found in the Act that "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury * * *" (Section 1). Upon reconsideration, therefore, we are of the opinion and we find that considerations of marine safety and discipline give no reason for disturbing our findings in Section III A, above, as to the respondent's interference with, restraint, and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Nor do we believe that prevention under the Act of discrimination by maritime employers against seamen who have engaged in concerted activities is in any sense incompatible with the marine safety legislation to which the Court refers in its opinion.²³ To say that "the fact that Rosen was a labor leader heightened the wrong" of the activity in which he engaged is to justify the discharge of active union members for conduct which in others might be regarded as not improper. Similarly, to presume that a seaman who leads his fellows in union activity "well may have been absent from his station and inattentive to his duties" is to make union activity *prima facie* evidence of carelessness or incompetence. Either would make possible

²³Section 1002 of the Merchant Marine Act of 1936, as amended, expressly provided that "enforcement of any of the navigation laws of the United States or any other laws relating to seamen" shall not be affected. 52 Stat. 965, 46 U.S.C.A., Sec. 1252.

the discharge of seamen who are active union members or officers almost without reference to the propriety or impropriety of their activities according to normal standards and without regard for the proscriptions contained in the Act.

In any event, the record shows that Rosen's union activities neither endangered discipline nor interfered with his work, and we find that the respondent in discharging him was not moved by any such considerations. Rosen's union activities on board the S. S. Nevada and the S. S. Washington consisted of presiding over weekly union meetings held in the crew's quarters, acting as delegate to discuss grievances with the ship's officers, drafting letters urging the crews of the respondent's other ships to join the Union and criticizing the respondent for its alleged refusal to improve working conditions, and protesting to the respondent's general manager the refusal of the catpain of the S. S. Washington to recognize the delegates of the Union. There is nothing in the record to indicate that these activities endangered the safety of the respondent's ships on which Rosen worked or of the cargoes they carried, or that his union activities were detrimental to discipline on board those ships, within the meaning of the legislation to which our attention has been directed. Hence there is no basis for concluding that any of these Congressional enactments were violated by Rosen and it does not appear that he was prosecuted for any criminal offense in that respect. There is, therefore, no basis for believing

that Rosen's reinstatement with back pay involves any such threat to discipline or safety or any such conflict with marine safety legislation as to require us to deny this normally applicable remedy. Upon reconsideration, we find no reason to alter our conclusion that Rosen was discriminatorily discharged and that his reinstatement with back pay will effectuate the purposes of the Act.²⁴

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III A, C, and D above, occurring in connection with its operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

We have found that the respondent, by its anti-union statements and in other ways, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. We shall order the respondent to cease and desist from such practices.

We have found that the respondent discriminatorily discharged J. Gordon Rosen from the S. S.

²⁴We have not vacated our original order with respect to Buckless, and we therefore do not reconsider his case, although the same considerations apply to his union activities as to those of Rosen.

Nevada on April 19, 1938, and from the S. S. Washington on July 14, 1938. We shall therefore order the respondent to offer Rosen immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges, which we find is necessary to effectuate the purposes and policies of the Act even though he may have obtained substantially equivalent employment elsewhere.²⁵ We shall further order the respondent to make Rosen whole for any loss of pay suffered by him by reason of his discharges by payment to him of a sum equal to the amount which he normally would have earned as wages from April 19, 1938, the date of his discharge from the S. S. Nevada, to June 1, 1938, when he was rehired on the S. S. Washington, and from July 14, 1938, the date of his discharge from the S. S. Washington, to the date of the offer of reinstatement, less his net earnings²⁶ during such periods.

²⁵See *Phelps Dodge Corporation v. National Labor Relations Board*, 313 U. S. 177, mod'f'g and rem'd'g 113 F. (2d) 202 (C.C.A. 2), enf'g as mod. *Matter of Phelps Dodge Corporation*, 19 N.L.R.B. 547; *National Labor Relations Board v. Blanton Co.*, 121 F. (2d) 564 (C.C.A. 8), enf'g as mod. *Matter of Blanton Co.*, 16 N.L.R.B. 951, as amended by 18 N.L.R.B. 143; *Matter of Ford Motor Company and International Union, United Automobile Workers of America, Local Union No. 249*, 31 N.L.R.B. 994.

²⁶By "net earnings" is meant earnings less expenses, such as for transportation, room, and board,

Since J. Gordon Rosen, while in the employ of the respondent, received maintenance on board ship in addition to his wages, we shall order that the reasonable value of such maintenance during the periods for which we shall award back pay be included in the total amount to be paid him by the respondent.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. National Maritime Union of America, Port Arthur Branch, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of J. Gordon Rosen, thereby discouraging membership in National Maritime Union of America, Port Arthur Branch, the respondent has engaged in and is engaging in unfair

incurred by an employee in connection with seeking work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. National Labor Relations Board*, 311 U. S. 7.

labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, Marine Division, New York City and Houston, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

(b) In any other manner interfering with, re-

straining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to J. Gordon Rosen immediate and full reinstatement to the position held by him on July 14, 1938, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages,—including the reasonable value of his maintenance on board ship,—from April 19, 1938, to June 1, 1938, and from July 14, 1938, to the date of the respondent's offer of reinstatement, less his net earnings during such periods;

(c) Immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage

in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of his Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of National Maritime Union of America, Port Arthur Branch, and that the respondent will not discriminate against any employee because of his membership in or activity in behalf of said organization;

(d) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Signed at Washington, D. C., this 18 day of July 1942.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

[Seal]

NATIONAL LABOR RELATIONS BOARD

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, James B. Minor, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of

said Board in Washington, D. C.; that on the 18th day of July, 1942, I mailed postpaid, bearing government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

The Texas Company, Marine Division

Port Arthur, Texas (69347)

A. E. Van Dusen, Esquire

135 East 42nd Street

New York, N. Y. (69348)

Messrs. J. W. Williams and James H. Pipkin

The Texas Company Building

Port Arthur, Texas (69349)

Mandell & Combs

Att: Herman Wright & W. A. Combs,
Esquires

417 Shell Building

Houston, Texas (69350)

Max Lustig, Esquire

291 Broadway

New York, New York (69351)

JAMES B. MINOR

Subscribed and sworn to before me this 18th day of July, 1942.

[Seal]

KATHRYN B. HARRELL

Notary Public, D. C. My Commission expires
March 1, 1947.

[Endorsed]: No. 10237. United States Circuit Court of Appeals for the Ninth Circuit. The Texas Company, Petitioner, vs. National Labor Relations Board, Respondent. Supplemental Transcript of Record. Upon Petition to Review and Enforce an Order of the National Labor Relations Board.

Filed October 13, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the
United States Circuit Court of Appeals
For the Ninth Circuit

No. 10237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, The Texas Company, respectfully shows and alleges:

I. That your petitioner is, and at all times here-

inafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Montana, Idaho and Arizona; and that it is now and at all times hereinafter mentioned has been transacting business in the said States of Montana, Idaho and Arizona, and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

II. That heretofore and on or about September 3, 1938, upon charges filed by the National Maritime Union of America, Port Arthur Branch (hereinafter called the "Union"), the respondent, National Labor Relations Board (hereinafter sometimes referred to as the "Board"), issued a complaint against your petitioner alleging that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as the "Act"), 49 Stat. 449, in that your petitioner had (1) discharged and refused to reinstate certain seamen, (2) through its officers, agents and employees, made various statements to its employees discouraging affiliation in or activity on behalf of the Union, and (3) denied passes to representatives of the Union to board petitioner's vessels to contact members of the Union, all in violation of said Act.

III. That on or about September 12, 1938, your

petitioner duly served and filed its answer and amended answer to said complaint in which your petitioner denied that it had engaged in or was engaging in any unfair labor practices or had violated the Act as alleged in said complaint.

IV. That issue having been joined in the said proceeding between the Board and your petitioner, a hearing was held at Port Arthur, Texas, from September 12 to 16 and from September 19 to 22, 1938, before Howard Myers, a Trial Examiner duly designated by the Board, and a further hearing was held also at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board.

V. That at the opening and close of the Board's case and at the close of the entire case, your petitioner duly moved to dismiss the Board's complaint and all proceedings thereunder on the ground that no cause of action was alleged or proved, but said motions were denied by the Trial Examiner.

VI. That on or about May 8, 1939, Trial Examiner Myers filed his Intermediate Report, in which he found and concluded that petitioner had engaged in unfair labor practices and in which he recommended that petitioner take certain affirmative action to remedy the situation brought about by such unfair labor practices, including reinstatement with back pay of four seamen.

VII. That on October 24, 1939, oral argument of counsel was had before the Board upon the issues of fact and of law in said proceedings, in which

argument counsel for your petitioner prayed that said complaint and the proceedings thereunder be dismissed upon the grounds set forth in petitioner's various motions to dismiss and in petitioner's exceptions to the Trial Examiner's Intermediate Report and upon the further ground that neither the acts of your petitioner alleged in said complaint nor the acts of your petitioner as shown in the testimony or other evidence at the hearing constituted any violation of the National Labor Relations Act, 49 Stat. 449, or of any other law or statute, the enforcement of which is entrusted to the Board.

VIII. That on or about January 24, 1940, the said Board did make and file its decision and final order in the said proceedings, which decision and order was served on your petitioner by mail on January 24, 1940.

IX. That on or about May 7, 1940, a petition for a review of the aforesaid order and decision was filed with this Court and on June 24, 1940, the Board filed an answer thereto requesting enforcement of its order.

X. Upon briefs filed by petitioner and the Board, and after oral argument in which petitioner and the Board participated by counsel, this Court, on May 23, 1941, entered its opinion (now officially reported in 120 F. (2d) 186), and a decree denying enforcement of the Board's aforesaid order as to one Clarence Buckless, a seaman, and remanding the remaining portions of such order to the Board for reconsideration in the light of the Court's opin-

ion and particularly certain maritime safety statutes to which the Court adverted in its opinion.

XI. That on June 28, 1941, and pursuant to this Court's opinion and decree above referred to, the Board vacated and set aside its decision and order of June 24, 1940, with the exception of paragraph 2(a) thereof, and, pursuant to notice served upon the petitioner and the Union, a hearing for the purpose of reargument was held before the Board in Washington, D. C. on July 17, 1941, at which hearing the petitioner and the Union were represented by counsel.

XII. Thereafter, or on July 18, 1942, the Board handed down a decision signed by only two members of the Board, by which your petitioner was ordered to:

“1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain

collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to J. Gordon Rosen immediate and full reinstatement to the position held by him on July 14, 1938, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages,—including the reasonable value of his maintenance on board ship,—from April 19, 1938, to June 1, 1938, and from July 14, 1938 to the date of the respondent's offer of reinstatement, less his net earnings during such periods;

(c) Immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs

1(a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of National Maritime Union of America, Port Arthur Branch, and that the respondent will not discriminate against any employee because of his membership in or activity in behalf of said organization;

(d) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith."

XIII. That the Board's aforesaid decision and order are erroneous in fact, unauthorized and insufficient in law, and ought to be reviewed and set aside by this Court for the following reasons:

(1) The said decision and order of July 18, 1942, and the findings of fact and conclusions of law of the Board upon which the said decision and order are based, are not in accordance with law, are contrary to the evidence, are without evidence to support them, and are not supported or warranted by substantial or credible evidence;

(2) In its said decision and order the Board has failed to give due consideration to the opinion of this Court handed down on May 23, 1941,

and to the maritime safety legislation discussed and adverted to in said opinion.

(3) The acts of petitioner as shown by the testimony and evidence do not constitute a violation of the National Labor Relations Act;

(4) The Board erred in finding and concluding that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(1) and 8(3) of the Act;

(5) The Board erred in finding and concluding that your petitioner warned its employees against organization, threatened to discharge Union members and questioned an employee about membership in the Union and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the said Act;

(6) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the S. S. Nevada because of Union activities;

(7) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the S. S. Washington because of Union activities;

(8) The Board erred in directing petitioner to cease and desist and to take affirmative action

as specified in the Board's aforesaid decision and order and to post notices to such effect.

Wherefore, your petitioner prays this Honorable Court to review and set aside the decision and order of the National Labor Relations Board herein referred to, and to grant petitioner such other and further relief as to the Court may seem just and proper.

Dated: August 28, 1942.

THE TEXAS COMPANY

By JAMES TANHAM

Vice President.

ALBERT E. VAN DUSEN,

135 East 42nd Street,

New York City, N. Y.

J. A. McNAIR,

929 So. Broadway,

Los Angeles, California

Attorneys for Petitioner,

The Texas Company.

State of New York,

County of New York—ss.

James Tanham, being duly sworn, deposes and says: That he is an officer, to wit, Vice President, of The Texas Company, the petitioner named in the foregoing petition; that he has read the foregoing petition by him subscribed as such officer and knows the contents thereof; that the same is true to the knowledge of deponent except as to the mat-

ters therein related to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES TANHAM

Subscribed and sworn to before me this 28th day of August, 1942.

[Seal] SUSAN B. GIFFORD

Notary Public, Kings County. Clerk's No. 669,
Register's No. 3263. N. Y. Co. Clerk's No. 605,
Reg. No. 3G374.

My Commission expires March 30, 1943.

[Endorsed]: Filed Sep. 1, 1942.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U.S.C., Sec. 151, et seq.), hereinafter called the Act, files this answer and request for enforcement of the Board's order.

1. The Board admits the allegations contained in paragraph 1 of the petition for review.

2. Answering the allegations contained in paragraphs II to XII, inclusive, of the petition for review, the Board prays reference to the certified transcript of the record, filed herein, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

3. The Board denies each and every allegation contained in paragraph XIII of the petition for review, and in the sub-sections thereunder, numbered (1) to (8), inclusive.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board, were and are in all respects valid and proper under the Act.

Wherefore, having answered each and every allegation contained in the petition to review, the Board respectfully prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further Answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on July 18, 1942, in proceedings designated on the records of the Board as Case No. C-1276, entitled, "In the Matter of the Texas Company, Marine Division and National Maritime Union, Port Arthur Branch."

In support of this request for enforcement of its order, the Board respectfully shows:

(a) Petitioner, a Delaware Corporation, is engaged in business within this Judicial Circuit. This Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions filed thereto, written and oral argument had thereon, Decision and Order of the Board dated January 24, 1940; Opinion and Decree of this Court, entered on May 23, 1941, in proceedings for review and enforcement of said order of the Board, said proceedings being designated on the records of this Court as Case No. 9518, entitled *The Texas Company v. National Labor Relations Board*; Order of the Board, dated June 28, 1941, vacating and setting aside in pertinent part said Decision and Order of the Board, dated January 24, 1940; and written and oral reargument before the Board, the Board, on July 18, 1942, made its decision, duly stating its findings of fact and conclusions of law, and issued the following order, directed to petitioner, its officers, agents, successors, and assigns:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, Marine Division, New York City and Houston, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to J. Gordon Rosen immediate and full reinstatement to the position held by him on July 14, 1938, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages,—including the reasonable value of his maintenance on board ship,—From April 19, 1938, to June 1, 1938, and from July 14, 1938 to the date of the respondent's offer of reinstatement, less his net earnings during such periods;

(c) Immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of National Maritime Union of America, Port Arthur Branch, and that the respondent will not discriminate against any employee because

of his membership in or activity in behalf of said organization:

(d) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

(c) On July 18, 1942, the Board's decision and order was duly served upon petitioner and all other parties.

(d) Pursuant to Section 10(e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and of the filing of the certified transcript of the entire record in said proceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceedings and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire record of said proceeding, and upon the order made thereon, a decree denying the petition to review and set aside, and enforcing the whole, said order of the Board, issued on July 18, 1942, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 8th day of October, 1942.

NATIONAL LABOR RELATIONS BOARD

By ERNEST A. GROSS

Acting General Counsel

District of Columbia—ss.

Ernest A. Gross, being first duly sworn, states that he is Acting General Counsel of the National Labor Relations Board, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

ERNEST A. GROSS

Acting General Counsel

Subscribed and sworn to before me this 8th day of October, 1942.

[Seal]

JOSEPH W. KULKIS

Notary Public, District of
Columbia.

My Commission Expires April 15, 1947.

[Endorsed]: Filed Oct. 12, 1942.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION PROVIDING FOR
CONTENTS OF RECORD

Subject to this Court's Approval, It Is Hereby Stipulated and Agreed by and between the attorneys for the above-named parties that the record in the above cause shall consist of the record heretofore filed in cause No. 9518, and the supplemental proceedings entered into by the National Labor Relations Board pursuant to the remand contained in this Court's opinion of May 23, 1941, in cause No. 9518.

Dated at New York, New York, this 8th day of October, 1942.

ALBERT S. VAN DUSEN
Attorney for Petitioner

Dated at Washington, D. C., this 2nd day of October, 1942.

ERNEST A. GROSS
Acting General Counsel,
National Labor Relations
Board

Approved:

FRANCIS A. GARRECHT
Judge, United States Circuit
Court of Appeals for the
Ninth Circuit

[Endorsed]: Filed Oct. 14, 1942.

IN THE
United States Circuit Court of Appeals

For the Ninth Circuit

No. 10,237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW.

ALBERT E. VAN DUSEN,
135 East 42nd Street,
New York City, N. Y.,

J. A. McNAIR,
929 So. Broadway,
Los Angeles, California,

*Attorneys for Petitioner,
The Texas Company.*

FILED

SEP - 1 1942

PAUL P. O'BRIEN,

CLERK

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

No. _____

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, The Texas Company, respectfully shows and alleges:

I. That your petitioner is, and at all times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Montana, Idaho and Arizona; and that it is now and at all times hereinafter mentioned has been transacting business in the said States of Montana, Idaho and Arizona, and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

II. That heretofore and on or about September 3, 1938, upon charges filed by the National Maritime Union of America, Port Arthur Branch (hereinafter called the "Union"), the respondent, National Labor Relations Board (hereinafter sometimes referred to as the "Board"),

issued a complaint against your petitioner alleging that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as the "Act"), 49 Stat. 449, in that your petitioner had (1) discharged and refused to reinstate certain seamen, (2) through its officers, agents and employees, made various statements to its employees discouraging affiliation in or activity on behalf of the Union, and (3) denied passes to representatives of the Union to board petitioner's vessels to contact members of the Union, all in violation of said Act.

III. That on or about September 12, 1938, your petitioner duly served and filed its answer and amended answer to said complaint in which your petitioner denied that it had engaged in or was engaging in any unfair labor practices or had violated the Act as alleged in said complaint.

IV. That issue having been joined in the said proceeding between the Board and your petitioner, a hearing was held at Port Arthur, Texas, from September 12 to 16 and from September 19 to 22, 1938, before Howard Myers, a Trial Examiner duly designated by the Board, and a further hearing was held also at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board.

V. That at the opening and close of the Board's case and at the close of the entire case, your petitioner duly moved to dismiss the Board's complaint and all proceedings thereunder on the ground that no cause of action was alleged or proved, but said motions were denied by the Trial Examiner.

VI. That on or about May 8, 1939, Trial Examiner Myers filed his Intermediate Report, in which he found and concluded that petitioner had engaged in unfair labor prac-

tices and in which he recommended that petitioner take certain affirmative action to remedy the situation brought about by such unfair labor practices, including reinstatement with back pay of four seamen.

VII. That on October 24, 1939, oral argument of counsel was had before the Board upon the issues of fact and of law in said proceedings, in which argument counsel for your petitioner prayed that said complaint and the proceedings thereunder be dismissed upon the grounds set forth in petitioner's various motions to dismiss and in petitioner's exceptions to the Trial Examiner's Intermediate Report and upon the further ground that neither the acts of your petitioner alleged in said complaint nor the acts of your petitioner as shown in the testimony or other evidence at the hearing constituted any violation of the National Labor Relations Act, 49 Stat. 449, or of any other law or statute, the enforcement of which is entrusted to the Board.

VIII. That on or about January 24, 1940, the said Board did make and file its decision and final order in the said proceedings, which decision and order was served on your petitioner by mail on January 24, 1940.

IX. That on or about May 7, 1940, a petition for a review of the aforesaid order and decision was filed with this Court and on June 24, 1940, the Board filed an answer thereto requesting enforcement of its order.

X. Upon briefs filed by petitioner and the Board, and after oral argument in which petitioner and the Board participated by counsel, this Court, on May 23, 1941, entered its opinion (now officially reported in 120 F. (2d) 186), and a decree denying enforcement of the Board's aforesaid order as to one Clarence Buckless, a seaman, and remanding the remaining portions of such order to the Board for reconsideration in the light of the Court's opin-

ion and particularly certain maritime safety statutes to which the Court adverted in its opinion.

XI. That on June 28, 1941, and pursuant to this Court's opinion and decree above referred to, the Board vacated and set aside its decision and order of June 24, 1940, with the exception of paragraph 2(a) thereof, and, pursuant to notice served upon the petitioner and the Union, a hearing for the purpose of reargument was held before the Board in Washington, D. C. on July 17, 1941, at which hearing the petitioner and the Union were represented by counsel.

XII. Thereafter, or on July 18, 1942, the Board handed down a decision signed by only two members of the Board, by which your petitioner was ordered to:

“1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to J. Gordon Rosen immediate and full reinstatement to the position held by him on July 14, 1938, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages,—including the reasonable value of his maintenance on board ship,—from April 19, 1938, to June 1, 1938, and from July 14, 1938 to the date of the respondent's offer of reinstatement, less his net earnings during such periods;

(c) Immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of National Maritime Union of America, Port Arthur Branch, and that the respondent will not discriminate against any employee because of his membership in or activity in behalf of said organization;

(d) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith."

XIII. That the Board's aforesaid decision and order are erroneous in fact, unauthorized and insufficient in law, and ought to be reviewed and set aside by this Court for the following reasons:

(1) The said decision and order of July 18, 1942, and the findings of fact and conclusions of law of the Board upon which the said decision and order are based, are not in accordance with law, are contrary to the evidence, are without evidence to support them, and are not supported or warranted by substantial or credible evidence;

(2) In its said decision and order the Board has failed to give due consideration to the opinion of this Court handed down on May 23, 1941, and to the maritime safety legislation discussed and adverted to in said opinion.

(3) The acts of petitioner as shown by the testimony and evidence do not constitute a violation of the National Labor Relations Act;

(4) The Board erred in finding and concluding that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(1) and 8(3) of the Act;

(5) The Board erred in finding and concluding that your petitioner warned its employees against organization, threatened to discharge Union members and questioned an employee about membership in the Union and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the said Act;

(6) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the *S.S. Nevada* because of Union activities;

(7) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the *S.S. Washington* because of Union activities;

(8) The Board erred in directing petitioner to cease and desist and to take affirmative action as specified in the Board's aforesaid decision and order and to post notices to such effect.

WHEREFORE, your petitioner prays this Honorable Court to review and set aside the decision and order of the National Labor Relations Board herein referred to, and to grant

petitioner such other and further relief as to the Court may seem just and proper.

Dated: August 28, 1942.

THE TEXAS COMPANY

By JAMES TANHAM

Vice President.

ALBERT E. VAN DUSEN,
135 East 42nd Street,
New York City, N. Y.,

J. A. McNAIR,
929 So. Broadway,
Los Angeles, California,

*Attorneys for Petitioner,
The Texas Company.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JAMES TANHAM, being duly sworn, deposes and says: That he is an officer, to wit, Vice President, of THE TEXAS COMPANY, the petitioner named in the foregoing petition; that he has read the foregoing petition by him subscribed as such officer and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein related to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES TANHAM

Subscribed and sworn to before me }
this 28th day of August, 1942. }

SUSAN B. GIFFORD

Notary Public, Kings County

[SEAL] Clerk's No. 669, Register's No. 3263

N. Y. Co. Clerk's No. 605, Reg. No. 3G374

My Commission Expires March 30, 1943

United States Circuit Court of Appeals

For the Ninth Circuit

No. 10237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

UPON PETITION TO REVIEW, AND REQUEST FOR ENFORCE-
MENT OF, ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

BRIEF FOR PETITIONER.

ALBERT E. VAN DUSEN,
135 East 42nd Street,
New York, N. Y.,

J. A. McNAIR,
929 So. Broadway,
Los Angeles, California,

*Attorneys for Petitioner,
The Texas Company.*

DEC 28 1942

PAUL P. O'BRIEN,
CLERK

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United States Circuit Court of Appeals

For the Ninth Circuit

No. 10237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

UPON PETITION TO REVIEW, AND REQUEST FOR ENFORCEMENT OF, ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

BRIEF FOR PETITIONER.

Preliminary Statement.

This is the second time this case is before the Court. The opinion of this Court as a result of the first hearing was handed down on May 23, 1941, and is reported in 120 F. (2d) 186.

Jurisdiction.

The case is before the Court pursuant to Section 10 (f) of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Section 151, *et seq.*) upon petition by The Texas Company, petitioner herein, to review and set aside an order issued by the National Labor Relations Board under Section 10 (c) of the Act.

The jurisdiction of this Court is based upon Section 10 (f) of the Act which expressly provides for a review of orders and decisions of the National Labor Relations Board on the filing of a petition to set aside the Board's order by any aggrieved person who transacts business within the jurisdiction of the Circuit Court of Appeals in which the petition is filed.

As required by Section 10 (f) of the Act, The Texas Company, petitioner, is, and at all the times mentioned in said petition has been, transacting business in the States of Montana, Idaho and Arizona, and within the jurisdiction of this Court (R. 135).

Statement of the Case.

Proceedings Before the Board.

On September 3, 1938, upon charges filed by the National Maritime Union of America, Port Arthur Branch (hereinafter called "Union"), the respondent, the National Labor Relations Board (hereinafter sometimes referred to as the "Board") issued a complaint against your petitioner alleging that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce in violation of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as the "Act") in that your petitioner had (1) discharged for union activities and refused to reinstate ten seamen employed on vessels of petitioner, (2) through its officers, agents and employees, made various statements to its employees discouraging affiliation in or activity on behalf of the Union, and (3) denied passes to representatives of the Union to board petitioner's vessels to contact members of the Union, all in violation of said Act (R. 4-9).

On or about September 12, 1938, your petitioner duly served and filed its answer and amended answer to said complaint in which your petitioner denied that it had engaged in or was engaging in any unfair labor practices or had violated the Act as alleged in said complaint (R. 10-13).

Thereafter, issue was joined and hearings held before a Trial Examiner. At the beginning of the hearings the Board's complaint was amended to include an allegation that petitioner had unlawfully discharged two additional seamen, making the total twelve (R. 85).

On May 8, 1939, the Trial Examiner filed his Intermediate Report in which he found that four seamen had been discharged by petitioner for union activities (R. 49, 50). Exceptions to the Trial Examiner's Report were duly filed with the Board by petitioner (R. 53-80). Subsequently, on October 24, 1939, oral argument was heard before the Board (R. 87).

On January 24, 1940, the Board rendered its decision and final order in which it found and concluded that petitioner had violated the Act in the respects hereinafter mentioned and in which it directed petitioner to cease and desist engaging in particular practices and to take certain affirmative action (R. 81-122). The Board specifically found, however, that petitioner had not violated the Act in refusing passes to board its vessels (R. 90-91).

On or about May 7, 1940, a petition for a review of the aforesaid order and decision was filed with this Court and on June 24, 1940, the Board filed an answer thereto requesting enforcement of its order.

Upon briefs filed by petitioner and the Board, and after oral argument in which petitioner and the Board participated by counsel, this Court, on May 23, 1941, entered its opinion (now officially reported in 120 F. (2d) 186), and a decree denying enforcement of the Board's aforesaid order

as to one Clarence Buckless, a seaman, and remanding the remaining portions of such order to the Board for reconsideration in the light of the Court's opinion and particularly certain maritime safety statutes to which the Court adverted in its opinion (R. 1725, 1740).

On June 28, 1941, and pursuant to this Court's opinion and decree above referred to, the Board vacated and set aside its decision and order of June 24, 1940, with the exception of paragraph 2(a) thereof, and, pursuant to notice served upon the petitioner and the Union, a hearing for the purpose of reargument was held before the Board in Washington, D. C. on July 17, 1941, at which hearing the petitioner and the Union were represented by counsel.

Thereafter, or on July 18, 1942, the Board handed down a decision and order in the case, signed by only two members of the Board, in which the Board, in effect, adhered to and reaffirmed its decision of January 24, 1940 (R. 1749-1781).

It is the decision and order of the Board of July 18, 1942, which petitioner is now asking this Court to review (R. 1783-1791).

The Board's Decision.

In its decision and order of July 18, 1942, the Board found that petitioner had violated the Act in the following specific respects:

1. That petitioner had interfered with, restrained, and coerced its employees on its vessel, the *S.S. California*, in the exercise of the rights guaranteed in Section 7 of the Act, by "warning its employees against Union organization, by threatening the discharge of Union members, and by questioning an employee concerning the identity of Union members" (R. 1759-1762).

2. That on two occasions petitioner had discharged for union activities and had refused to reinstate and award back pay to J. Gordon Rosen, a seaman (R. 1765-1776).

Upon the basis of these findings, the Board directed petitioner to

(1) cease and desist from

(a) discouraging membership in the National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization (R. 1779);

(b) in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act (R. 1779);

(2) take the following affirmative action:

(a) offer to J. Gordon Rosen immediate and full reinstatement to the position held by him on July 14, 1938, or to a substantially equivalent position (R. 1780);

(b) make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of petitioner's discrimination in regard to his hire and tenure of employment (R. 1780);

(c) immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting (R. 1780).

Specification of Errors.

Petitioner contends that the Board erred in the following respects:

1. In finding and concluding that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(1) and 8(3) of the Act.

2. In finding and concluding that your petitioner warned its employees against organization, threatened to discharge Union members, and questioned an employee about membership in the Union, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

3. In finding and concluding that your petitioner discharged J. Gordon Rosen from the *S.S. Nevada* and the *S.S. Washington* because of union activities.

4. In directing petitioner to cease and desist and to take affirmative action as specified in the Board's decision and order and to post notices to such effect.

5. In that the Board failed to give due consideration to the opinion of this Court handed down on May 23, 1941, and to the maritime safety legislation discussed and adverted to in said opinion.

Summary of Argument.

Petitioner contends, in brief, that

1. There is no substantial evidence in the record to support the Board's conclusion that J. Gordon Rosen was discharged for union activities, but, to the contrary, the evidence shows that he was lawfully discharged for good and sufficient cause.

2. There is no substantial evidence in the record to sustain the Board's conclusion that petitioner, by anti-union statements or otherwise, interfered with the rights guaranteed to its employees by Section 7 of the Act.

3. The Board improperly ordered petitioner to cease and desist from "in any other manner" interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act.

4. The Board improperly directed petitioner to post cease and desist notices in the manner required by the Board's order.

POINT I.

There is no substantial evidence in the record to support the Board's finding and conclusion that petitioner discharged J. Gordon Rosen because of union activities.

It was contended by the Union and found by the Trial Examiner that J. Gordon Rosen had been discharged by petitioner for union activities on three separate occasions, as follows:

<i>S.S. California</i>	September 19, 1937
<i>S.S. Nevada</i>	April 19, 1938
<i>S.S. Washington</i>	July 14, 1938
	(R. 19, 49).

In its original decision in this case, handed down on January 24, 1940, the Board agreed with its Trial Examiner only in part, however, and held that Rosen was not discharged for union activities from the *S.S. California* (R. 100), but was discharged for union activities from the *S.S. Nevada* and the *S.S. Washington* (R. 108, 110).

In the oral argument and briefs filed on the review of the Board's original decision by this Court, petitioner contended that there was no substantial evidence in the record to sustain the Board's finding and conclusion that Rosen was discharged for union activities from either the *S.S. Nevada* or the *S.S. Washington*, but that, on the contrary, the overwhelming evidence proved beyond any doubt that Rosen was discharged from such vessels for neglect of duty. In this Court's opinion in that case, handed down May 23, 1941, this Court, after holding that one seaman, Clarence Buckless, had not been discharged for union activities, remanded the case to the Board for further consideration as to Rosen. In its opinion, this Court, speaking through DENMAN, J., made the following observations relative to Rosen's discharge:

“ * * * It appears that after Buckless' discharge, Rosen, a labor leader, proceeded to agitate among the seamen against the captain for his (the captain's) entirely justifiable action. Nothing could be more disruptive of the necessary respect due the captain's proper decision in matters of ship discipline. The fact that Rosen was a labor leader heightened the wrong. During Rosen's active leadership there had been threats of an illegal sit-down strike of the crew because there was among them one member of the International Seaman's Union. There was a jurisdictional dispute between his C. I. O. union and the I. S. U. and Rosen used the structure of the vessel itself to display on her side a large C. I. O. banner as she came into port. A labor leader so actively

engaged in jurisdictional and other agitation among the crew, in part highly improper and in part justified, well may have been absent from his station and inattentive to his duties, as testified by the ship's officers. Cf. *Peninsular and Occidental S.S. Co. v. National Labor Relations Board*, supra. It is of note that three other active labor leaders not shown to have engaged in conduct subversive to the ship's necessary discipline remain as members of the crew." *The Texas Company v. National Labor Relations Board*, 120 F. (2d) 186, 190.

Although this Court did not specifically hold that the Board's findings in respect to Rosen were erroneous, it, nevertheless, indicated very definitely that it felt that Rosen, like Buckless, had not been discharged for union activities. The Court further indicated that the Board had disregarded the substantial body of "Congressional safety legislation for the manning, navigation, and management of vessels created to protect the lives of the members of the crew" in considering the problem which confronted it.

In remanding the case, this Court said (at p. 190):

"Since the entire proceeding was conducted with such an ignoring of the long established Congressional legislation for the protection of life at sea and with such a misconception of the powers of a ship's officers and managers necessary in such protection, we deem it for the best interests of the participating parties and for labor legislation generally to remand to the now reconstructed Board the proceedings leading to those portions of the Board's order, other than that concerning the discharge and back pay of Buckless, for a reconsideration—having in view this opinion. *Ford Motor Company v. National Labor Relations Board*, 305 U. S. 364, 373; *National Labor Relations Board v. Cowell Portland Cement Co.*, 108 F. (2d) 198, 206 (CCA-9); *National Labor Relations Board v. Sterling Electric Motors, Inc.*, 118 F. (2d) 893, 897 (CCA-9), decided March 14, 1941."

An examination of the Board's decision of July 18, 1942, following reargument of the case pursuant to this Court's order, discloses that in reconsidering the proceedings it has failed to give proper consideration and weight to the maritime safety legislation referred to by the Court and to the duties of the master and crew. In fact, the Board flatly takes issue with the conclusions of the Court, particularly when the Board says:

"Nor do we believe that prevention under the Act of discrimination by maritime employers against seamen who have engaged in concerted activities is in any sense incompatible with the marine safety legislation to which the Court refers in its opinion. To say that 'the fact that Rosen was a labor leader heightened the wrong' of the activity in which he engaged is to justify the discharge of active union members for conduct which in others might be regarded as not improper. Similarly, to presume that a seaman who leads his fellows in union activity 'well may have been absent from his station and inattentive to his duties' is to make union activity *prima facie* evidence of carelessness or incompetence. Either would make possible the discharge of seamen who are active union members or officers almost without reference to the propriety or impropriety of their activities according to normal standards and without regard for the proscriptions contained in the Act" (R. 1774).

After making the above comments, the Board proceeds to discuss the various activities of Rosen aboard the *S.S. Nevada* and the *S.S. Washington*, and then concludes that such activities did not endanger discipline or interfere with work aboard ship. Says the Board:

"In any event, the record shows that Rosen's union activities neither endangered discipline nor interfered with his work, and we find that the respondent

in discharging him was not moved by any such considerations. Rosen's union activities on board the *S.S. Nevada* and the *S.S. Washington* consisted of presiding over weekly union meetings held in the crew's quarters, acting as delegate to discuss grievances with the ship's officers, drafting letters urging the crews of the respondent's other ships to join the Union and criticizing the respondent for its alleged refusal to improve working conditions, and protesting to the respondent's general manager the refusal of the captain of the *S.S. Washington* to recognize the delegates of the Union. There is nothing in the record to indicate that these activities endangered the safety of the respondent's ships on which Rosen worked or of the cargoes they carried, or that his union activities were detrimental to discipline on board those ships, within the meaning of the legislation to which our attention has been directed. Hence there is no basis for concluding that any of these Congressional enactments were violated by Rosen and it does not appear that he was prosecuted for any criminal offense in that respect. There is, therefore, no basis for believing that Rosen's reinstatement with back pay involves any such threat to discipline or safety or any such conflict with marine safety legislation as to require us to deny this normally applicable remedy. Upon reconsideration, we find no reason to alter our conclusion that Rosen was discriminatorily discharged and that his reinstatement with back pay will effectuate the purposes of the Act" (R. 1775).

It is significant that the Board's decision of July 18, 1942 was not handed down for a year after reargument of the case before it. It is also significant that nowhere in the Board's decision does it comment upon or attempt to justify Rosen's conduct, *over the objection of the Master and officers*, in using the side of the *S.S. Washington* to display a large C. I. O. banner as the vessel came into port. Yet, that fact was regarded by this Court as rather convincing evidence of a disregard of discipline aboard ship and of the

safety of the ship, its cargo, and crew (see 120 Fed. (2d) 186, at p. 190).

In the brief filed by counsel to the Board at the first hearing before this Court, such counsel urged that the display of the C. I. O. banner was evidence of Rosen's union activities and sufficient reason for finding that he had been discharged for such activities.

It is obvious that the Board has misapprehended this Court's opinion. It is quite true that the display of the banner was evidence of union activities in a broad sense, but it was also evidence of the fact that Rosen was deliberately flouting the orders of the master of the vessel and its officers, and, consequently, endangering the lives of the crew and the safety of the vessel and its cargo.

Furthermore, an examination of the record discloses that Rosen's conduct was not union activity on behalf of his own union. The sign (13 feet to 15 feet long and 4 feet high) was displayed as an act of sympathy with a strike of the crew of a local ferry (R. 290, 291); it was displayed from the side of the ship at the port of New Orleans (R. 291); it was hung from the side of the ship again two days later at Port Arthur, Texas (R. 293). The sign was deliberately called to the attention of several officers of the vessel, and, although one of such officers said it ought not to be displayed, it nevertheless remained (R. 291-292). It was even put up again later by Rosen and his fellow seaman, Buckless, after it had been taken down (R. 293).

Obviously, this conduct on the part of Rosen and Buckless, and particularly Rosen, cannot be considered within the scope of legitimate or proper union activities. It did not concern union organization or activity aboard the *S.S. Washington*. To any reasonable man it was nothing more or less than a deliberate attempt on the part of Rosen and Buckless to ignore the authority of the officers of the ship. It certainly was not conducive to ship discipline.

Review of the Evidence.

Inasmuch as the evidence pertaining to Rosen's discharges from the *S.S. Nevada* and the *S.S. Washington* was undoubtedly given careful consideration by this Court on the first hearing of this case, petitioner deems it unnecessary to review such evidence in detail at this time.

Briefly, such evidence disclosed the following:

As to the *S.S. Nevada*:

The only evidence found by the Board to support its conclusion that Rosen was discharged for union activities was (1) Rosen's *own* testimony that he was an active union leader; (2) testimony of seaman Leo Herman to the effect that Chief Mate Tranberg told him that he (Tranberg) had fired Rosen for union activities; and (3) testimony of seaman George Hart that he was standing nearby when Herman reported to Chief Mate Tranberg that the rest of the crew objected to Herman's membership in the International Seamen's Union.

Petitioner does not dispute that Rosen was active in union matters but desires to point out that other seamen on the *S.S. Nevada* were just as active. Rosen himself admitted that, in addition to himself and Clarence Buckless, two other seamen, Lee Holmes and Sidney Cole, were ship's delegates and also active union men (R. 228). Board's witness, Clarence Buckless, made the same admission and added the ship's steward, Jensen (R. 783-784). All of these men, Buckless testified, remained on the vessel after Rosen left (R. 785). Moreover, Rosen also admitted that, except for one man, the ship was "100 per cent unionized" (R. 242, 414).

It should be evident, therefore, that there was nothing unusual in Rosen's activities on behalf of the Union and

that there existed no reason why he should have been discharged for such activities and not the other seamen who were also active union members. Certainly, such evidence is insufficient to prove that Rosen was discharged on April 19, 1938, for union activities.

As for the testimony of Herman, it was testified that nine days *after* Rosen left the ship Herman asked Chief Mate Tranberg why Rosen was "fired" and was told that he was fired for union activities (R. 907-908). Tranberg not only denied this statement but asserted that Rosen was discharged for neglect of duty (R. 1156, 1160). His testimony was corroborated by Captain Swanson, Master of the vessel (R. 1243-1245, 1248, 1278).

In considering Herman's testimony it should be borne in mind that he admitted that he later filed charges of unlawful discharge against petitioner (R. 892-895). He consulted Rosen about his claim and Rosen took him to a lawyer (R. 888). When asked about his later interview with Rosen he said: "When I went to the Goodhue Hotel I just went to help Mr. Rosen about the statement that the Mate said in the *Nevada*" (R. 892). It is questionable, therefore, whether Herman's testimony should be given much weight.

As for the testimony of Hart, it was testified that he was merely standing nearby when Herman spoke to Mate Tranberg shortly after Herman came aboard the *S.S. Nevada* (R. 497). He did not testify that he heard either Herman or Tranberg say anything about Rosen (R. 497, 498).

On the other hand, the overwhelming evidence unquestionably shows that Rosen had for some time been lax and neglectful of his duties and that his services were no longer desired by his superiors because his work had been found to be unsatisfactory. In support of this is the following evidence:

(1) *Testimony of Carl Tranberg.*

Tranberg, Chief Mate of the *S.S. Nevada*, and Rosen's immediate superior, testified that Rosen always "intentionally wanted to lag behind in his work all along and also in neglecting his duty" (R. 1150). He found Rosen playing cards when he should have been standing watch in bad weather (R. 1151). On another occasion he found Rosen writing when he should have been on watch (R. 1152). Twice Rosen failed to take his standby watch at night (R. 1153, 1154). As to the seriousness of this offense Tranberg testified:

"Q. In operating a ship like the 'Nevada', is it or is it not important that a man be at his stand by watch? A. Absolutely.

"Q. Why? A. It is required by law to have that amount of men on duty for the safety of property and lives aboard the ship" (R. 1154).

He warned Rosen that if he didn't do better he would have "to get somebody else in your place" (R. 1152). On April 19, 1938, he told Rosen he would replace him because of neglect of duty (R. 1160).

(2) *Testimony of Captain Swanson.*

Captain Swanson, Master of the *S.S. Nevada*, testified that Rosen appeared to him to be "purely lazy" (R. 1245). Rosen showed less interest in his work than the rest of the crew (R. 1244). Mate Tranberg complained to him (Captain Swanson) about Rosen's work "many times" and about Rosen's failure to stand watch properly (R. 1245).

There can be no doubt from the foregoing that the two chief officers of the vessel, the Master and Chief Mate, were satisfied that Rosen had been neglecting his duties and was, therefore, not a desirable seaman. In view of their testi-

mony can it be reasonably contended that Rosen was dismissed for union activities?

Assuming that there may be some doubt as to this, Rosen's own testimony dispels it. He admitted it was possible he "loafed" (R. 441). He also admitted that Mate Tranberg told him the reason he was "fired" was because "your work is not satisfactory" (R. 263).

Moreover, as pointed out above, Rosen and Clarence Buckless (a Board witness) both admitted that other seamen were as active union men as they were and yet were not discharged (R. 158, 783-786). Certainly such uncontradicted facts do not show a purpose on the part of petitioner to discharge men for union activities.

In concluding that Rosen was discharged from the *S.S. Nevada* for union activities it should be borne in mind that subsequently, on or about June 1, 1938, Rosen was rehired by respondent, this time on its *S.S. Washington* (R. 200, 331). Is that evidence that Rosen had been discharged for union activities? Isn't it more likely that if petitioner had already gone to the trouble of getting rid of Rosen for union activities it would not have reemployed him?

Petitioner submits that the substantial evidence proves beyond any doubt that Rosen was not discharged from the *S.S. Nevada* for union activities but that, on the expiration of his Shipping Articles on April 19, 1938, he was dismissed for cause.

As to the *S.S. Washington*:

After leaving the *S.S. Nevada* on April 19, 1938, Rosen testified that he was unemployed until June 1, 1938, at which time he signed shipping articles on petitioner's vessel, the *S.S. Washington* (R. 331). He was employed on such vessel until July 14, 1938 (R. 367).

Again, the Union contends that Rosen was discharged for union activities. Petitioner takes the position, however, that Rosen was not dismissed for union activities but that, on the expiration of his Shipping Articles on July 14, 1938, he was not reemployed because he again continually neglected his duties.

The conclusion that Rosen was discharged for union activities from the *S.S. Washington* is supported *solely* by Rosen's own testimony that he was active in union matters aboard ship (R. 276-290).

Again, as in the case of the *S.S. Nevada*, if it is assumed that Rosen did engage in the activities above referred to, there is no evidence in the record to show that such activities brought about Rosen's leaving the *S.S. Washington* on July 14, 1938, and the refusal of Captain Bergman of that vessel to reemploy him. Moreover, in the case of the *S.S. Washington* no testimony was introduced to corroborate Rosen's claim that he was discharged for union activities.

To the contrary, the substantial evidence proves conclusively that Rosen's services were no longer desired because his work had been found to be unsatisfactory. The following evidence supports this conclusion:

(1) *Testimony of C. P. Johannesen.*

Johannesen, Chief Mate of the *S.S. Washington* and Rosen's immediate superior, testified that about three days after the *S.S. Washington* left Port Arthur Rosen began to slack up and lag in his work (R. 1541, 1542). He didn't do required painting (R. 1542). It took him four hours to do two hours' work (R. 1542). He often left his working position during the time he was on duty (R. 1543, 1544). He was warned about a dozen times (R. 1568). At the Captain's suggestion Rosen was given a chance on a second trip but he failed to improve (R. 1544).

(2) *Testimony of Captain Bergman.*

Captain Bergman testified that Chief Mate Johannesen complained to him about Rosen's neglect of work (R. 1394). He himself verified the complaints (R. 1394, 1416). He decided Rosen was not the kind of a seaman to be carried on his ship (R. 1393, 1394). After one trip he told the Mate to give Rosen another chance (R. 1414). Since Rosen did not improve he told the Mate not to reemploy him (R. 1415).

(3) *The Crew List.*

Captain Bergman testified that the vessel's crew list was an official and customary report on which entries were made at the time seamen are paid off showing what men quit and what men sign new articles (R. 1396, 1401). Such list is made up in every port and sent in to the main office (R. 1401, 1402). The crew list of July 16, 1938, showed the circumstances under which Rosen left. The entry on such list was:

“Paid Off Previous Trip (Left Ship)

<i>Name</i>	<i>Capacity</i>	<i>Date</i>	<i>Reason</i>
Gordon Rosen (Petitioner's Exhibit R-18)	A. B.	Jul. 14	Discharged for incompetency”

The entries above referred to were made by Captain Bergman himself (R. 1395, 1396).

Again, as in the case of the *S.S. Nevada*, the two Chief Officers of the vessel, namely, the Master and Chief Mate, were satisfied that Rosen had been neglecting his duties. *In view of the testimony of such chief officers and the substantiating entry in the ship's crew list, can it reasonably be contended that Rosen was discharged for union activities?*

It is significant to note that Rosen admits that Mate Johannesen told him the reason he was letting him go was

because "Your seamanship is unsatisfactory" (R. 299, 300) and that he (Rosen) dragged along "too slow" (R. 301). This is substantially the reason testified to by the Chief Mate himself (R. 1542, 1544).

As to the entry in the crew list, the Board said in its order of January 24, 1940:

"In view of Rosen's long experience as a seaman we do not credit the notation on the crew list that he was incompetent" (R. 109).

Since Captain Bergman and his Chief Mate Johannesen obviously used the term "incompetent" in referring to the fact that they had found Rosen to be "slow" and that he neglected his work, rather than to his ability as a seaman, the entry in the crew list should not have been disregarded. Furthermore, the keeping of a crew list is a regular part of a Master's duties on every voyage, and it is even required by statute on foreign voyages that the crew list be filed with the Collector of Customs (46 U. S. C. A., 677). It is clearly an entry made in the regular course of business and is entitled to weight as such.

During the course of his testimony Rosen admitted that there were other seamen who were active union men, namely, Archie West, Alfred Wukasch and L. Simmons (R. 285, 294-296). Yet all these men remained on the vessel after Rosen left (Petitioner's Exhibit R-18; R. 1397, 1398). Again, petitioner asks, is this an indication of a purpose to discharge men for union activities?

In disregarding the testimony of Captain Bergman and Chief Mate Johannesen that Rosen neglected his work, petitioner believes the Board failed to take into consideration that when Rosen was on the *S.S. Nevada* Captain Swanson and Chief Mate Tranberg of that vessel also testified that Rosen's work was unsatisfactory. Is it probable that all four of these men were not telling the truth? *Isn't it sig-*

nificant that Rosen was found to be guilty of neglect of duty on two separate occasions by the commanding officers of two separate vessels?

Furthermore, it should be borne in mind that, at least insofar as the *S.S. Washington* is concerned, which is the last vessel on which Rosen was employed, the only evidence to support the claim that Rosen was discharged for union activities is his own uncorroborated testimony. On the other hand, there is the testimony of the Captain and Chief Mate of the *S.S. Washington*, and the crew list kept by Captain Bergman. In addition, such testimony is clearly given weight and credibility by the testimony of the Captain and Chief Mate of the *S.S. Nevada*, who also swore that Rosen had been neglectful of his duties while a seaman on their ship.

In *National Labor Relations Board v. Sands Manufacturing Company*, 306 U. S. 332, 341, 342, the evidence was strikingly similar to the evidence here. There the evidence supporting the Board's order consisted solely of the testimony of two men who were discharged for incompetency but who thought they were discharged because of a "grudge" and union activities. Their claim was based primarily on anti-union statements made by certain foremen. The Supreme Court held that the anti-union statements made by supervisory employees were not necessarily evidence of their employer's policy and that the evidence in support of the Board's order was not much more than a scintilla and, therefore, could not be sustained. The Supreme Court said, speaking through Justice ROBERTS:

" * * * The Board supports the conclusion by reference to the testimony of two men. One, Norman, who was, with the union's consent, discharged after the agreement of June 15, 1935, for incompetency, testified he thought he was discharged as a

result of a grudge. He said that in June, one McKiernan, a shipping clerk who was his superior, told him when he complained about his discharge: 'I will tell you; there is a lot more of this than you and I know of. . . . ' 'I will get you back when we break this union up. . . . ' There is the further testimony of a witness Rudd who says that the superintendent said to him in June, in effect, that it would be better to have the A. F. of L. union as they were more conservative and not so likely to strike. This was just after 'Mesa' had called two strikes in the plant. Neither of the men who were quoted held such a position that his statements are evidence of the company's policy even in June, two months before the discharge, and the inference of hostility to 'Mesa' drawn from their testimony does not, in any event, amount to a scintilla when considered in the light of respondent's long course of conduct in respect of union activities and in dealing freely and candidly with 'Mesa'."

In the case at bar there is nothing to support the charge that Rosen was discharged for union activities other than the testimony of the discharged seaman himself that he was an active union man. In the light of the Supreme Court's decision above referred to how can such evidence be considered substantial!

Aside from the fact that Rosen's case is based entirely on his own testimony, practically all of his testimony consisted of notes made by him of conversations he himself had with others and conversation between others which he overheard (R. 270-303; 378-399). Obviously, most of this testimony was hearsay. Although the Courts have held that the Board can admit improper, immaterial and hearsay testimony, such evidence can not be said to be substantial when it is the sole foundation for the findings and order of the Board. *National Labor Relations Board v. Washington*

Dehydrated Food Co., 118 Fed. (2d) 980, 985 (C. C. A.—9th); *National Labor Relations Board v. Union Pacific Stages*, 99 Fed. (2d) 153, 176 (C. C. A.—9th); *National Labor Relations Board v. Bell Oil & Gas Co.*, 98 Fed. (2d) 870 (C. C. A.—5th).

In addition to all this evidence of Rosen's laziness and neglect of duty, there is also, as pointed out above, the *undisputed* evidence of the sign incident which this Court has already characterized as "in part highly improper" and as corroboration of testimony given by the ship's officers that he (Rosen) was "absent from his station and inattentive to his duties." See 120 F. (2d) 186, 190.

It is significant to note that in the brief filed with this Court at the previous hearing in this case, Board's counsel asserted that Rosen and Buckless were the "out-standing Union leaders on the ships in which they sailed" and that no other seamen were of "comparable stature" in Union affairs (Board's Brief, p. 15). Yet, although the Board concluded in its order of January 24, 1940, that Captain Bergman had discharged Rosen from the *S.S. Washington* for union activities, the Board also found that Captain Bergman had *justifiably* discharged Buckless from the same vessel! It is indeed difficult to understand why petitioner's conduct was proper in the one case and reprehensible in the other.

The courts have considered cases of discharge for inefficiency and refusal to obey instructions and it has been held that "interference with the right of an employer to determine when an employee is inefficient should not be lightly indulged in when applying the Labor Relations Act." *National Labor Relations Board v. Thompson*, 97 F. (2d) 13, 17 (C. C. A. 6th).

If any consideration at all is to be given an employer's judgment as to whether a particular employee is unfit for

his job either because of neglect of duty, drunkenness or some other cause, then certainly, as indicated by this Court, special consideration should be given such judgment in the case of tank vessels carrying a dangerous cargo such as gasoline, as is the case here. It should be borne in mind that the Master is in complete charge of the vessel. He is responsible for the safety of its cargo and personnel. His authority over his seamen is shown by the fact that disobedience to his commands may subject the seamen to (1) loss of wages, 46 U. S. C. A. 701; (2) suspension of their certificates by the Bureau of Marine Inspection and Navigation, 46 U. S. C. A. 239; and (3) possible indictment for mutiny, 18 U. S. C. A. 483.

Moreover, a vessel manned by an incompetent crew has been held to be unseaworthy:

Lord v. Goodall, 15 Fed. Cas. No. 8506;

In re Meyer, 74 Fed. 881;

In re Pacific Mail S. S. Co., 130 Fed. 76;

The Rolph, 299 Fed. 52.

In *Lord v. Goodall*, *supra*, it was held that the master of a vessel must exercise due care in the selection of his crew. In *The Rolph*, *supra*, the vessel was held to be unseaworthy and the owners of the vessel liable for damages for an assault committed by a seaman who had been shown to be of a brutal and violent nature.

In the proceedings herein being considered, the Captains and Mates of petitioner's vessels had found Rosen to be neglectful of his duty and had found Buckless to be an habitual drunkard. Under the above authorities, can there be any doubt that the Masters of petitioner's vessels would have been derelict in their duty had they reemployed these men?

The federal statutes impose rigid rules and standards in respect to ship operation. The U. S. Supreme Court has recognized the connection between working conditions and safety at sea and has pointed out that the primary purpose of the statutory regulations is to promote safety at sea.

O'Hara v. Luckenbach S. S. Co., 269 U. S. 364, 367;

McCrea v. U. S., 294 U. S. 23, 27.

Although an employer cannot dismiss an employee because of union activities, the evidence of such fact should be clear and the employer should not be deprived of his right to discharge an employee for good and sufficient cause. *National Labor Relations Board v. Lane Cotton Mills Co.*, 111 F. (2d) 814 (C. C. A. 5th).

In the light of the foregoing and in view of the peculiar conditions existing at sea, the case of *Peninsular & Occidental S. S. Co. v. National Labor Relations Board*, 98 Fed. (2d) 411 (Cert. denied 305 U. S. 653), points out that great weight is to be given the Master's testimony and he should not be held bound to retain under his supervision seamen whom he considers unfit or unsatisfactory. In commenting on the duty of a Master of a ship the Circuit Court of Appeals for the Fifth Circuit said, in that case (p. 414) :

“The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. * * * ”

The views expressed in the decisions above mentioned were concurred in in the first opinion of this Court in this

case (120 F. (2d) 186). Since such decision, the same views were expressed by the Circuit Court of Appeals for the Sixth Circuit in the case of *National Labor Relations Board v. U. S. Truck Co., Inc.*, 124 F. (2d) 887 (C. C. A. 6), and by the United States Supreme Court in the case of *Southern Steamship Co. v. National Labor Relations Board*, 62 S. Ct. 886 (1942).

In the *Truck Co.* case the Circuit Court held that an employee of the U. S. Truck Co. was properly discharged for a violation of safety regulations promulgated under the Motor Carrier Act and not for union activities. Said the Court (at p. 889):

“The respondent is engaged in an interstate trucking business and operates between Michigan and Ohio under the Motor Carrier Act, Title 49 U. S. C. § 301 et seq., 49 U. S. C. A. § 301 et seq., a federal statute of equal force with the National Labor Relations Act. Employers who operate in interstate transportation are compelled to obey the mandates of the Motor Carrier Act equally with the mandates of the National Labor Relations Act, *and the safety provisions of the former statute are of paramount importance.*” (Italics ours.)

In the *Southern Steamship Company* case, the Supreme Court held that seamen who engaged in a sitdown strike while their vessel was in port and who defied direct commands to perform their duties were not discharged for union activities. Said the Court, speaking through BYRNES, J. (at p. 889):

“Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master’s care. Every one and every thing depend on him. He must

command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the one hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority. We shall consider in a moment the nature and scope of the criminal sanctions imposed in case of revolt and mutiny. But it is worth noting here that the form of the 'shipping articles' which the master and every member of the crew must sign prior to the voyage has been carefully prescribed by Congress, and that these articles contain this promise: 'And the said crew agree * * * to be obedient to the lawful commands of the said master * * * and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore * * *.'

"In any event, a sweeping requirement of obedience throughout the course of a voyage is certainly not without basis in reason. The strategy of discipline is not simple. *The maintenance of authority hinges upon a delicate complex of human factors, and Congress may very sensibly have concluded that a master whose orders are subject to the crew's veto in port cannot enforce them at sea.* * * *

"* * * It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task." (Italics ours.)

Assuming Rosen was an active union leader, it is difficult to see how the Board, in the light of the above opinion and

of the previous opinion of this Court, can justify Rosen's inattention to his duties at sea and hold that the officers of the *S.S. Nevada* and the *S.S. Washington* should not have discharged him, but permitted him to remain aboard their vessels despite their better judgment.

There is a further reason for denying Rosen reinstatement and back pay in this case, and that is that, even assuming he may have been discharged for union activities, there is no evidence that his discharge resulted in any interference with or discouragement of union activities aboard either the *S.S. Nevada* or the *S.S. Washington*.

In the case of *Stonewall Cotton Mills v. National Labor Relations Board*, 129 F. (2d) 629 (C. C. A. 5th), it was pointed out that before an employer can be found to have committed an unfair labor practice in the discharge of an employee for union activities, it must appear that the discharge has in fact discouraged union membership. Said the Court:

“When it comes to the layoffs and discharges found to have been in violation of Section 8(3) of the Act, the case stands differently. The courts have pointed out so often that it need not be elaborated here that though the fact of union activity or office in the union is a fact to be considered by the Board in connection with other facts bearing upon the issue, the affirmative of which is on the Board as accuser to establish before itself as trier, *Magnolia Petroleum Co. v. N. L. R. B.*, 5 Cir., 112 F. 2d 545; *N. L. R. B. v. Riverside Mfg. Co.*, 5 Cir., 119 F. 2d 302, 307; *N. L. R. B. v. Tex-O-Kan*, 5 Cir., 122 F. 2d 433; *N. L. R. B. v. Union Mfg. Co.*, 5 Cir., 124 F. 2d 332, the invoked section does not, of course, mean that membership or office in a union is a guarantee against discharge, lay-off or demotion. An employee, though he belongs to or is an officer of a union, may, like any other em-

ployee, be discharged for any reason or for no reason at all, unless it is for a reason prohibited by the Act. *It must be borne in mind that this charge is not sustained by evidence and a finding merely that persons were discharged because of their union activity.* To make out a case under it, it must appear that an employer has by discrimination in regard to hire, etc., encouraged or discouraged membership in any labor organization. This requires proof of both the purpose and effect of the action under review. *N. L. R. B. v. Air Associates*, 2 Cir., 121 F. 2d 586, at page 592.” (Italics ours.)

In the case at bar, Rosen himself admitted that the *S.S. Nevada* was “one hundred percent unionized” except for one man and that the *S.S. Washington* was completely unionized except for two men (R. 242, 414).

As to both the *S.S. Nevada* and the *S.S. Washington*, Rosen also admitted that there were aboard said vessels a number of other seamen who were active Union men (R. 158, 285, 294-296). Yet, all these men remained on such vessels after Rosen left (R. 801; Petitioner’s Exhibit R-18).

Under the circumstances, it is difficult to see how Rosen’s discharge in any way discouraged or interfered with unionization aboard the vessel. To the contrary, all the evidence indicates that the Union was at all times quite active and in fact had complete control of the vessels.

Applying the foregoing principles to the case at hand, and considering that in every instance the Master’s testimony was corroborated by others, petitioner submits that there can be no doubt that Rosen was lawfully dismissed for good and sufficient cause.

Petitioner also submits that the Board has failed to give proper consideration to maritime safety legislation and the responsibilities of officers and crew of a vessel at sea, as

directed in this Court's opinion of May 23, 1941, and that if the Board had, it could not have avoided the conclusion that Rosen's conduct interfered with discipline aboard ship and thereby seriously endangered the safety of the ship, its cargo and crew, to an extent amply justifying his discharge.

POINT II.

There is no justification for the conclusion that respondent, by anti-union statements and in other ways, interfered with, restrained, or coerced its employees in violation of Section 8(1) and 8(3) of the Act.

In the Board's decision of July 18, 1942, in this case appears the following conclusion of law:

“By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(1) of the Act.” (R. 1779.)

On the basis of such conclusion, the Board ordered petitioner (1) to cease and desist from (a) in any manner discriminating in regard to hire and tenure of employment or any conditions of employment and (b) in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act; and (2) to post notices of compliance with the Board's order (R. 1779, 1780).

This conclusion is based on the finding by the Board that certain anti-union statements were made by Earl Baldwin,

Second Mate of the *S.S. California*, to J. Gordon Rosen and to James Blasingame while they were employed as seamen on such vessel. These statements are:

1. Baldwin's statement to Rosen when he reported for duty:

"Just a minute, there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business."

2. Baldwin's statement to Blasingame warning him against "drunkenness", "missing watches", and "union agitating".

3. Blasingame's statement that:

"He (Baldwin) told me he belonged to some union out on the west coast, and he got gypped out of about \$50, and he never did get nothing out of it, and he ain't never had any use for a union since".

4. Baldwin's statement to Blasingame that he (Baldwin) had to get rid of a man "because he was agitating union all the time."

5. Baldwin's statement to Blasingame, when a newly hired seaman wearing a union button came aboard:

"There is a man who won't ride this ship long."

6. Baldwin's statement to Blasingame, after Baldwin asked him if a certain new seaman was a "rank and file":

"Well, if he is he won't be on this ship very long."

It is evident from a mere reading of the above statements that they are nothing more or less than expressions

of the opinion of Mate Baldwin regarding unionism. It is difficult to see how it can be said that such statements could represent the views or policy of petitioner.

When the statements were made Baldwin was either Second Mate or Acting First Mate on the *S.S. California*. He was not in charge of the vessel since the Master was Captain Peterson, who alone had complete authority over the vessel and its personnel (R. 953). Baldwin was merely a foreman in charge of the deck crew (R. 953). He was, therefore, only a supervisory employee.

The courts have held that general expressions of opinion regarding unions are not sufficient to sustain a charge of interference with employee rights. *National Labor Relations Board v. Union Pacific Stages*, 99 F. (2d) 153, 178 (C. C. A. 9th). It has also been held that an expression of preference for a particular union is not an unfair labor practice. *National Labor Relations Board v. Falk Corporation*, 102 F. (2d) 383, 389; *Jefferson Electric Co. v. National Labor Relations Board*, 102 F. (2d) 949, 956 (C. C. A. 7th); *L. Grief & Bro. Inc. v. National Labor Relations Board*, 108 F. (2d) 551, 558 (C. C. A. 4th); *National Labor Relations Board v. Swank Products*, 108 F. (2d) 872, 875 (C. C. A. 3rd); *Cupples Co. Manufacturers v. National Labor Relations Board*, 106 F. (2d) 100, 114 (C. C. A. 8th).

Moreover, spontaneous activities and statements on the part of minor supervisors not shown to be acting for the management are not evidence of an unfair labor practice by the employer. *National Labor Relations Board v. Swank Products*, 108 F. (2d) 872, 875 (C. C. A. 3rd); *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 98 F. (2d) 758, 761 (C. C. A. 2nd).

In *National Labor Relations Board v. Sands Mfg. Co.*, 306 U. S. 332, the Supreme Court, in giving consideration to

the effect of statements made by supervisory employees, said (at p. 342):

“ * * * Neither of the men who are quoted held such a position that his statements are evidence of the company's policy even in June, two months before the discharge, and the inference of hostility to ‘Mesa’ drawn from their testimony does not, in any event, amount to a scintilla when considered in the light of respondent's long course of conduct in respect of union activities and in dealing freely and candidly with ‘Mesa’.”

In *Kansas City Power & Light Co. v. National Labor Relations Board*, 111 F. (2d) 340 (C. C. A. 8th) the Court said (at p. 351):

“ * * * The supervisory character of these two men is too minor for such statements to be regarded as expressions of the management without some proof of knowledge or authorization thereof by the management. *National Labor Relations Board v. Sands Mfg. Co.*, 306 U. S. 332, 341, 342, 59 S. Ct. 508, 83 L. Ed. 682.”

No evidence was offered by the Board to show that Baldwin's statements and expressions were authorized by or known to officials of petitioner. They were not even shown to be authorized by or known to Baldwin's superior, Captain Peterson.

On the other hand, the record is replete with evidence showing that the policy of petitioner was not to discriminate in any way between employees because of membership or non-membership in any organization. In fact, petitioner's policy in respect to labor is clearly set forth in its “Working Conditions and Overtime Rules”, which were conspicuously posted on petitioner's vessels, and stated that:

“The Texas Company
Marine Department
Working Conditions and Overtime Rules
Unlicensed Personnel

October 1, 1937

Notice to all Employees

(To be posted on bulletin boards of all vessels.) The Company announces the following general policy which will govern working conditions aboard its vessels.

General Rules

1. No employee will lose his job or be forced off a ship because of his membership or non-membership in any organization.

* * * * *

(Petitioner's Exhibit R-12; R. 1106, 1147; 1473).

Furthermore, the Masters and Mates of petitioner's vessels testified that their instructions were not to discriminate between their men because of union affiliations or activities and that that was their policy (R. 965-966, 1146, 1402, 1431, 1475, 1552).

Certainly, the working rules and instructions to the Masters of the vessels are better evidence of petitioner's policy toward labor than spontaneous and unauthorized expressions of opinion made by a supervisory employee. *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. (2d) 800, 802 (C. C. A. 6th Cir.).

Moreover, there is no evidence whatsoever that petitioner approved or was even aware of the statements alleged to have been made. On the contrary, Baldwin had been told by Captain Roney, petitioner's General Marine Manager, not to discriminate between employees because of union

activities or affiliations (R. 964, 965). As to this Mate Baldwin testified:

“Q. Has Captain Roney or Mr. Riever at any time told you not to discriminate because of union activities or affiliations?

A. Yes, sir, he has told that aboard the ship there, not to discriminate aboard towards any unions.

Trial Examiner Meyers: Was that in writing?

A. No, sir, it was not in writing.

Trial Examiner Meyers: Who told you?

A. Mr. Roney” (R. 965).

It is quite evident, therefore, that if any of Baldwin’s utterances displayed anti-union feeling or bias such utterances did not reflect the policy or views of petitioner.

A case precisely in point is that of *E. I. Du Pont De Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388, 400 (C. C. A. 4th) in which it was held that, where an employer had specifically instructed its officials and supervisory employees to refrain from showing partiality between unions, isolated utterances hostile to unions were not sufficient to support a finding of unfair labor practices. Said the Court on this point (at p. 400):

“ * * * Petitioner had specifically instructed its officials and supervisory employees to refrain from giving indications of any partiality and to avoid any expressions of opinion in reference to union matters. * * * ”

“This Court in *Martel Mills Corp. v. National Labor Relations Board*, 4 Cir., 1940, 114 F. 2d 624, 633, 634, recently dealt with an alleged violation of Section 8(1) through sundry statements of supervisory employees. We stated therein: ‘In the absence of evidence of any policy of proscribed discrim-

ination, an employer should not be held strictly accountable for every isolated utterance of a policy-making officer concerning union activities. * * * And, where the conduct and actions of the employer fail to indicate any violation of the Act, an assemblage of unrelated, unconnected expressions of opinion does not very deeply impress this Court.' "

Accord:

National Labor Relations Board v. Mathieson Alkali Works, Inc., 114 F. (2d) 796, 799 (C. C. A. 4th).

Then, too, the policy of petitioner, as expressed orally to Mate Baldwin by his superior, was reduced to writing and conspicuously posted on petitioner's vessels. Although the written statement of petitioner's policy was dated October 1, 1937, it is amply evident that the policy itself had been formulated some time prior thereto. The written statement merely confirmed a policy that had already often been orally declared by petitioner to the officers of its vessels (R. 964-966, 1146, 1402, 1431, 1475, 1552).

Petitioner does not dispute that minor supervisory employees may, under some circumstances, make statements or commit acts for which their employers are responsible. However, the test of such responsibility is whether the "employer may fairly be said to have been responsible" for the statements or acts (*National Labor Relations Board v. Link-Belt Co.*, 61 S. Ct. 358, 366), and whether the statements "reflect the policy of the employer" (*International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 92).

In the case at hand the evidence very plainly shows that the authority of Mates Baldwin and Rosen on the *S.S. California* was limited since Captain Peterson was in com-

plete charge of the vessel and he alone had the power to hire and fire (R. 953). Furthermore, as pointed out above, the utterances of Baldwin and Rosen did not reflect the policy of petitioner but were contrary to such policy. As was said by the Circuit Court of Appeals, 6th Circuit, in the case of *National Labor Relations Board v. Sparks-Withington Co., et al.*, 119 Fed. (2d) 78, 82, isolated instances of "personal zealotness and individual bias against the Union" on the part of supervisory employees is not binding on the employer.

* * * * *

Entirely apart, however, from the question of petitioner's responsibility for the statements alleged to have been made by its officers on the *S.S. California*, Baldwin and Rosen, there is no basis whatsoever for a finding that petitioner engaged in unfair labor practices by virtue of such statements, for the reason that no evidence exists that such statements resulted in any interference, restraint or coercion in violation of rights guaranteed by the Act.

In so far as the *S.S. California* is concerned, the only specific charge of unfair labor practices made against petitioner was the original charge that petitioner had discharged J. Gordon Rosen and James Blasingame for union activities. Yet, the Board found and concluded, in its decision of January 24, 1940, that Rosen and Blasingame had not been discharged from the *S.S. California* for union activities! Assuming, therefore, that the statements attributed to Mates Baldwin and Rosen were made, it is difficult to see how such statements did in fact interfere with, restrain or coerce petitioner's employees aboard the *S.S. California* in the exercise of rights guaranteed them by the National Labor Relations Act. *National Labor Relations Board v. Mathieson Alkali Works, Inc.*, 114 F. (2d) 796 (C. C. A. 4th).

In *Press Co. Inc. v. National Labor Relations Board*, 118 F. (2d) 937, it was said by the Circuit Court of Appeals, District of Columbia (at p. 942):

“Before oral statements of an employer may be held to be an unfair labor practice, *it must appear that they interfered with, restrained, or coerced employees in the rights guaranteed by the Act*, that is to say, the right to join labor organizations, to bargain collectively, and to engage in concerted activities * * *.” (Italics ours.)

Accord:

National Labor Relations Board v. West Kentucky Coal Co., 116 F. (2d) 816, 822 (C. C. A. 6th).

* * * * *

In considering whether petitioner should be charged with a violation of the Act because of the statements alleged to have been made by certain of its supervisory employees, petitioner submits that the Board should bear in mind that, although the original complaint charged petitioner with engaging in unfair labor practices in respect to twelve seamen, all of these charges have since been dismissed except the charge pertaining to one seaman, namely, Rosen, which is now before the Court. Certainly, this almost complete vindication of petitioner's conduct is some proof that petitioner has neither adopted nor approved a policy of discrimination or anti-unionism.

Petitioner submits that the record wholly fails to show that the utterances of Mates Baldwin and Rosen, if made, were approved by or reflected the policy of petitioner or that such utterances actually resulted in the slightest interference, restraint or coercion in violation of the Act.

POINT III.

The Board improperly directed petitioner to cease and desist from “in any other manner” interfering with, restraining, or coercing its employees in the exercise of their rights under the Act.

Among other things, the Board, in its order of July 18, 1942, directed petitioner to cease and desist from:

“(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or *in any other manner* discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

“(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.” (R. 1779, 1780.)

In view of the decision of the United States Supreme Court in the case of *National Labor Relations Board v. Express Publishing Company*, 61 S. Ct. 693, it is now well settled that blanket “cease and desist” provisions similar to the above are improper. As stated by the Supreme Court:

“The mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt

proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged * * *."

The only specific charges of violation of the Act in this case are (1) the alleged discriminatory discharge of J. Gordon Rosen, and (2) the alleged violation of Section 8(1) of the Act in the charge that anti-union statements were made by certain employees of petitioner.

As to the discharge of Rosen, it is clear that, even if the charges as to him were sustained, there is no justification for the broad, blanket cease and desist provision above quoted. At most, petitioner would have violated the Act in the discharge of one seaman. That, certainly, is no ground for an order enjoining petitioner from "in any other manner" violating the Act.

As for the second item, even if the alleged statements were made, there is no evidence that the statements resulted in any interference, restraint, or coercion on the part of petitioner. In the absence of a particularization of the acts of interference or restraint, the broad order is clearly unwarranted. In the words of the Supreme Court, the order must state with "reasonable specificity the acts which the respondent is to do or refrain from doing."

It should be entirely clear that the Board erred in the generality and breadth of its order and that paragraph "(b)", above quoted, of the Board's order should be stricken and paragraph "a" modified so as to eliminate the phrase "or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment."

American Smelting & Refining Co. v. National Labor Relations Board, 126 F. (2d) 680 (C. C. A. 8th);

Wilson & Company v. National Labor Relations Board, 123 F. (2d) 411 (C. C. A. 8th);
National Labor Relations Board v. Cities Service Oil Co., 122 F. (2d) 149 (C. C. A. 2nd);
National Labor Relations Board v. Burry Biscuit Co., 123 F. (2d) 540 (C. C. A. 7th);
National Labor Relations Board v. Stone, 125 F. (2d) 752 (C. C. A. 7th).

POINT IV.

The Board improperly directed petitioner to post cease and desist notices in the manner specified by the Board's order.

Paragraph 2(c) of the Board's order of July 18, 1942, reads as follows:

“Immediately post notices to its employees in conspicuous places on its docks and vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating * * * .” (R. 1780-1781.)

Although petitioner operates a fleet of twenty-eight ocean-going vessels, only three, namely, the *S.S. California*, the *S.S. Nevada*, and the *S.S. Washington* are in any way involved in the charges of unfair labor practices now before this Court (R. 91-114). Since each master is in sole executive control of his own vessel, with power to hire and fire, and since the Board itself found that each vessel was a separate unit (R. 1766, n. 16), petitioner submits that any cease and desist notices which this petitioner should be required to post should be confined to the particular vessels in respect to which the unfair labor practices were found to have ex-

isted. Certainly, the determination of the existence of unfair labor practices at one factory or plant of a manufacturer could not be said to justify the posting of cease and desist orders at every other factory or plant owned by such manufacturer. It is submitted that the cases are analogous.

Assuming, therefore, that this Court sustains any part of the Board's order on the merits, the Board's order in respect to the posting of cease and desist notices should be modified so as to require petitioner to post notices only on the particular vessels involved in any unfair labor practices found to have been engaged in.

CONCLUSION.

The Board's petition for enforcement should be denied, and the Board's decision and order of July 18, 1942, should be vacated and set aside.

Respectfully submitted,

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December 18, 1942.

No. 10237

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

THE TEXAS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

**ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 10237

THE TEXAS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of The Texas Company to review and set aside an order of the National Labor Relations Board issued against it on July 18, 1942, pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*). In its answer to the petition, the Board has requested enforcement of its order. This Court has jurisdiction under Section 10 (e) and (f) of the Act; petitioner, a Delaware corporation, transacts business in the States of Montana, Idaho, and Arizona, within this judicial circuit.

STATEMENT OF THE CASE

This case is now before the Court for a second time. Previously, this case was before the Court on petition of The Texas Company to review and set aside an order of the Board issued against it on January 20, 1940 (R. 134-144). That order was based upon findings that petitioner, by warning its employees against organization in the Union, by threatening to discharge union members, by questioning an employee concerning the identity of union members, and by discharging Clarence Buckless and J. Gordon Rosen because of their union membership and activity, had engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act (R. 81-122). On May 23, 1941, this Court handed down its opinion (120 F. (2d) 186; R. 1725-1739) and entered its decree (R. 1740-1741), remanding the original case, except as to Buckless, to the Board for a redetermination of the issues in the light of the Court's opinion and particularly certain maritime safety statutes to which the Court adverted in its opinion.¹

¹ The Court denied enforcement of the Board's order insofar as it related to Buckless (R. 1726-1737). Petitioner had itself reinstated Buckless following his discharge but before the Board's order issued, and the Board did not order his reinstatement but only directed petitioner to pay him back pay (R. 120). The Court set aside this portion of the Board's order on the ground that, because of Buckless' "habitual drunkenness" (R. 1727), the order, in its view, was "in derogation of the efficient enforcement of the Congressional maritime safety laws" and would not effectuate the policies of the National Labor Relations Act (R. 1737). One member of the Court concurred specially in the result as to Buckless but would have enforced the remainder of the Board's

Thereafter, the Board issued its order vacating and setting aside its order in the original case (R. 1744–1745), and, following reargument by counsel for petitioner and the Union,² reconsidered the case in accord with the opinion of the Court.³ On July 18, 1942, the Board issued a new decision containing its findings of fact, conclusions of law, and order (R. 1749–1781). The Board membership was partly reconstituted.⁴

Apart from the jurisdictional findings (R. 1756–1758), as to which there is no controversy (R. 163–168) and which were upheld by this Court in the original case (R. 1725), the Board reaffirmed in substance its findings of fact as to petitioner's unfair labor practices described above (except as to Buck-

order instead of remanding it (R. 1739). The portion of the Board's original decision and order relating to Buckless is not again before the Court. For convenience, unless otherwise specifically indicated, throughout this brief we shall treat the Board's findings and order in the original case as if they omitted the findings and order as to Buckless, thus set aside by the Court.

The original case is known upon the dockets of the Clerk of this Court as Case No. 9518. By stipulation of the parties, approved by a Judge of this Court, the record in the instant case consists of the record in Case No. 9518 and the supplemental proceedings, set forth below, had by the Board pursuant to the remand in that case (R. 1799).

² We shall thus refer throughout this brief to the National Maritime Union, which filed the charges initiating this case before the Board. Petitioner also filed a brief with the Board (R. 1756).

³ The Board did not take further evidence but reconsidered the case upon the evidence taken during the hearing in the original case.

⁴ Board Member Leiserson participated in both decisions. He and Chairman Millis, who had been meanwhile appointed, constituted the Board which decided the case on the remand.

less; see note 1, pp. 2-3), and further explicitly found that considerations of maritime safety and discipline and the maritime safety legislation to which the Court had adverted in its opinion afforded no reason for disturbing these findings (R. 1774-1776). The Board's order requires petitioner to cease and desist from its unfair labor practices and, as affirmative action which the Board found would effectuate the policies of the Act, to offer Rosen reinstatement with back pay, and to post appropriate notices on its docks and vessels (R. 1779-1781). It is this new decision and order of the Board which petitioner now seeks to have set aside and which the Board asks to have enforced.

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, petitioner has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

II. The Board's order is valid and proper under the Act.

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, petitioner has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act

We shall first review the evidence which, we submit, substantially supports the Board's findings of fact in its second decision, as to petitioner's unfair labor practices, in violation of Section 8 (1) and (3)

of the Act. This appears at pp. 5–20, below. We shall then show that neither general considerations of safety and discipline at sea nor the body of marine safety legislation to which this Court adverted in its opinion remanding the case to the Board, subtract from the validity of the Board's findings. This discussion appears at pp. 21–29, *infra*.

A. The Board's findings of fact as to interference, restraint, and coercion are supported by substantial evidence

The Union was formally organized in May 1937 (R. 1608) by dissident (also known as “rank and file”) members of the International Seamen's Union (R. 200, 518–519, 1086). The following month J. Gordon Rosen and James Blasingame, both of whom were members of the newly formed organization (R. 200, 518–519), shipped as able-bodied seaman and quartermaster, respectively, on petitioner's vessel, the *California* (R. 199, 517–518). When Rosen reported for duty to Baldwin, acting chief mate of the ship (R. 521), Baldwin admonished him: “There is one thing * * * we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business” (R. 202–203).⁵ At about the same time Baldwin likewise warned Blasingame that “There are a few things we don't stand for on here.

⁵ In its opinion the Court indicated the view that this remark was prompted by inebriation among the crew of another of petitioner's vessels, the *S. S. Nevada* (R. 1731–1732). The fact is, however, that the warning was issued on the *California*, on which, so far as the record discloses, no conditions of drunkenness existed; moreover the remark was made prior to the voyage of the *Nevada* on which the condition existed (R. 644, 1237–1240).

That is, getting drunk, missing watches and agitating Union to the crew back there. * * * the minute you start out you are finished" (R. 573-574, 521, 204). Rosen testified that several other members of the crew told Rosen that they had also received similar threats and warnings from Baldwin at this time (R. 204).

In July 1937, Baldwin, who was then second mate, and in charge of the midnight to 4 a. m. sea watch to which Blasingame was also detailed, frequently engaged him in conversation during their watches (R. 523, 526, 952, 975). In these conversations Baldwin told Blasingame "how they had been running [the ship] without having any union men aboard" and that he had had to "get rid of" one of the crew "because he was agitating unions all the time" (R. 523). Baldwin also questioned Blasingame as to his union affiliation and that of other members of the crew, including Rosen (R. 523-526, 529), and declared, with reference to one newly hired employee, that he would not be "on this ship very long" if he belonged to the Union (R. 529). On another occasion, upon observing a newly shipped fireman come aboard wearing a Union button, Baldwin remarked, "There is a man who won't ride this ship very long" (R. 529-530). When Rosen was being paid off at the conclusion of the voyage, Baldwin explained to him, "Well, you know we don't want any agitating back there," referring to crew's quarters (R. 221). Blasingame testified that he also was told by Chief Mate David Rosen at the same time, "You can't ride

this ship any more. Go ride one of your rank and file ships" (R. 534-535).

Upon the foregoing facts, the Board's finding that petitioner had interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and collective bargaining, was entirely warranted (R. 1762). Indeed, we submit, it would be difficult to find oral coercion more plainly violative of the right to self-organization than such manifest hostility to union organization as was here displayed, including, as it did, direct threats of discharge for union activity, warnings against union organization, and questioning concerning the union affiliation of employees. See e. g., *N. L. R. B. v. Fruehauf Trailer Co.*, 301 U. S. 49, 55; *N. L. R. B. v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 75; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 598-599; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9); *N. L. R. B. v. Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9); *N. L. R. B. v. Schaefer-Hitchcock Co.*, decided November 12, 1942 (C. C. A. 9), 11 L. R. R. 425.⁶

⁶ Petitioner's contention that these warnings, threats, and questionings were "nothing more or less than expressions of the opinion" of their makers "regarding unionism" (Brief, pp. 30-31), is frivolous: the utterances and questionings constitute on their face deliberate efforts to obstruct self-organization. Moreover, as this Court recently pointed out, "Even expressions of opinion of such a nature as to intimidate and coerce employees * * * violate the Act." The *Schaefer-Hitchcock Co.* case, *supra*. See, also, *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477; *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 80; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9); *N. L. R. B. v. Federbush Co.*, 121 F. (2d) 954, 957 (C. C. A. 2).

Petitioner's responsibility under the Act for the activities of Mates Baldwin and Rosen is equally clear. As Second Mate and Chief Mate, respectively, these men were second and third officers in command of the vessel, and each was at times in sole charge of the ship (R. 173-176, 951-954, 1051);⁷ their authority over their subordinates, sanctioned by the rigor and law of the sea, is even greater than that of comparable supervisory officials in industrial establishments ashore. Cf. *Virginia Ferry Corp. v. N. L. R. B.*, 101 F. (2d) 103, 105-106 (C. C. A. 4). Plainly, they occupied positions sufficient under the controlling decisions to establish petitioner's liability under the Act, whether or not their conduct was within "the scope of their authority or contrary to the desires or instructions" of petitioner. The *Schaefer-Hitchcock* case, *supra*; the *Machinists* case, 311 U. S. 72, 79-80; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 599; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 520-521; *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787 (C. C. A. 9); *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87, 93 (C. C. A. 10); *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38, 44 (C. C. A. 6).⁸

⁷ Petitioner ingenuously asserts in its brief (p. 31) that Baldwin was "merely a foreman in charge of the deck crew. He was, therefore, only a supervisory employee."

⁸ This disposes, too, of petitioner's suggestion that the anti-union conduct of these supervisors is not attributable to it because such conduct was contrary to its "policy" (Brief, pp. 32-36). Petitioner's responsibility is clear under the foregoing decisions without regard to its "policy"; petitioner was required to make its "policy" effective. While petitioner subsequently posted a notice of "general policy" to its employees on all its ships, containing, *inter alia*, a general assurance that they would not be dis-

B. The Board's findings of fact as to discrimination against Rosen are supported by substantial evidence

The Board found that petitioner twice discharged J. Gordon Rosen because of his union membership and activities: the first time, on April 19, 1938, from the *S. S. Nevada*, on which he reshipped after he left the *California*, and subsequently, on July 14, 1938, from the *S. S. Washington*, on which Rosen shipped after his discharge from the *Nevada* (R. 1768, 1770).⁹ The Board's findings of fact in this regard are in each instance supported by substantial evidence.

1. The discharge from the S. S. "Nevada"

We have already referred to Rosen's employment by petitioner on the *S. S. California* (*supra*, p. 5).

criminated against for union membership (R. 1105-1112), the notice did not purport to advise the employees of their rights under the Act and of petitioner's neutrality. Moreover, as we show below (pp. 9-20), despite its pious declaration, petitioner subsequently discriminated against Rosen because of his union activities. In the circumstances, the notice may not be said to dissipate the coercive effects of petitioner's earlier unfair labor practices, which were never disavowed. Cf. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, in which the Supreme Court declared (at p. 82), that "it is for the Board * * * to determine how the effect of prior unfair labor practices may be expunged." Cf., also, *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. (2d) 658, 661 (C. C. A. 2); *N. L. R. B. v. Hawk & Buck Co., Inc.*, 120 F. (2d) 903, 905 (C. C. A. 5); *N. L. R. B. v. Kohen-Ligon-Folz, Inc.*, 128 F. (2d) 502 (C. C. A. 5); *Canyon Corp. v. N. L. R. B.*, 128 F. (2d) 953, 956 (C. C. A. 8).

⁹ The record indicates, as the Board found (R. 1766, note 16) and as petitioner apparently admits (Brief, p. 40), that each of petitioner's ships operates largely as a separate unit insofar as the hiring of unlicensed personnel is concerned, obtaining such personnel from uncoordinated agencies (R. 171-172, 850, 882-883, 962-963).

He had also shipped some 2 years before on petitioner's S. S. *Nevada* (R. 199). On January 10, 1938, several months after leaving the *California*, he was again shipped by petitioner as an able-bodied seaman on the *Nevada* (R. 199, 223). At this time Rosen had had about 10 years' experience as a seaman, of which 6 were as an able-bodied seaman (R. 199). Admittedly, his work theretofore had at all times been highly satisfactory: Mate Tranberg of the *Nevada* testified that he "always thought [Rosen] to be a very good man, a good worker" (R. 1150, 1214). And it was undenied that Rosen's work had been frequently praised and never criticized, that he had been assigned special tasks from time to time, and that when he quit the *Nevada* in 1936, Captain Swanson and Tranberg sought to dissuade him from leaving the ship at that time (R. 216-219, 222-227). In the circumstances, it is not surprising, as Rosen testified, that when he reshipped on the *Nevada* in 1938, the ship's officers were glad to have him back (R. 224-225).

On board the *Nevada*, Rosen immediately assumed leadership of union activities among the crew, all of whom, with one exception, were then members of the Union (R. 228).¹⁰ Thus, Rosen became ship chair-

¹⁰ Organizational and other union activities had to be conducted by the members of the crew without assistance from "outside" Union representatives, because petitioner, as a matter of "policy," refused to permit delegates or other Union agents to board its ships (R. 13). Petitioner also refused to treat with Union representatives in their representative capacity (R. 276, 286, 289-290). Although the Union, by January 1938, had entered into a standard trade agreement with at least eight of petitioner's competitors

man, in which capacity he frequently presided over union meetings which were held in the crew's quarters aboard ship each week (R. 240, 656-657). He was also elected secretary and "special spokesman" for the crew (R. 240), and was a conduit through which union literature and communications were brought aboard ship (R. 228). From time to time, he also acted as representative of the crew in presenting grievances to the ship's officers, including requests for shore leave, bonuses, and overtime pay (R. 230-237, 242-243), and he principally drafted a letter, copies of which the crew sent through the mails and hiring halls to crews of petitioner's other ships (R. 248-252, 255-257), urging them to join the Union and criticizing petitioner for "falling far below the standards" established by the Union on "fully organized ships" (R. 253-255).¹¹

On April 18, 1938, when the *Nevada* docked at Port Arthur, Clarence Buckless, another leader in Union affairs on the ship, was discharged by Captain Swanson, master of the vessel (R. 673, 1236). The discharge was regarded by Rosen and the crew generally, all of whom were with one exception members

(R. 1676-1709), and although it was certified by the Board on April 18, 1938, as the exclusive bargaining agency for the unlicensed personnel on all of petitioner's ships (6 N. L. R. B. 669), the Union was unable to obtain petitioner's approval of the standard or any other contract (R. 250, 416).

¹¹ Petitioner's contention that Rosen's union activities were not noteworthy (Brief, pp. 13, 16) is belied by the foregoing facts which more than adequately support the Board's findings that Rosen was "outstanding as an active union leader * * *, and that the ship's officers were aware of his activity" (R. 1765). See also, note 22, p. 20, *infra*.

of the Union, as having been prompted by Buckless' Union membership and activities,¹² and Rosen and another employee, as spokesmen for the crew, immediately protested the dismissal to Mate Tranberg but received no "satisfaction" (R. 258-259, 499).¹³ The following morning, petitioner hired one Herman, who was not a member of the Union (R. 861-862).

Later that morning Rosen asked Herman if he held a Union book (R. 260, 864) and he and other members of the crew made plain their resentment at Herman's non-Union status (R. 260-261, 498, 864-865). A little later, Tranberg questioned Herman as to the identity of the member of the crew who had spoken to him about

¹² In its original decision the Board found that Buckless was discriminatorily discharged (R. 101-108). As we have already stated (note 1, p. 2, *supra*), when this case was previously before this Court, the Court denied enforcement to the Board's order as to Buckless, and Buckless' dismissal is not again before the Court.

¹³ Rosen testified that Tranberg declared he did not know Buckless had been discharged, and expressed surprise at the news, but "wouldn't give us any satisfaction" (R. 259). The Court's suggestion in its opinion when the case was originally before the Court, that Rosen "proceeded to agitate among the seamen against the captain for his entirely justifiable action [in discharging Buckless]" and that "nothing could be more disruptive of the necessary respect due the captain's proper decision in matters of ship discipline" (R. 1737), is, we respectfully submit, based upon a misapprehension as to the state of the record in this regard. Rosen had in fact quashed a suggestion among the crew that a sit-down strike be conducted against the discharge, and had counselled peaceful access to the Board instead (R. 259-260, 263). He had also deterred members of the crew from protesting the dismissal to the port captain (R. 259). It is thus clear that, far from "agitating" in a manner inconsistent with proper discipline, Rosen had counselled the use of the processes Congress had devised to eliminate industrial strife. In its first decision, the Board agreed with the employees that Buckless' discharge was prompted by his union activities.

the Union (R. 865). Herman declined to divulge this information (*ibid.*), whereupon Tranberg said:

I know who you had the conversation with. It was Baldy [Rosen's sobriquet]. Baldy is a good man but he let the Union go to his head. We had a boatswain on here [referring to Buckless]; he done the same thing. Every time a [new] man comes on board he asked him if he had a union book (R. 865-866).

Shortly thereafter, Tranberg directed the quartermaster, Hart, to—

tell these people I don't want none of that kind of stuff here. I am not going to have it. I thought I got rid of that when I got rid of that fellow yesterday [referring to Buckless] (R. 498-499).

That afternoon Tranberg advised Rosen that he was discharged. When Rosen asked for an explanation for the abrupt dismissal, Tranberg answered, "Well, it *might* be [for] the reason that your work is not satisfactory" (*italics added*) (R. 263).¹⁴ About 9 days later, Tranberg confessed to Herman, that he had—

fired Baldy on account of union activities but that is not the reason that he gave him, but he also fired the boatswain [Buckless] on account of union activities but the captain found another reason to fire him (R. 866-867).¹⁵

¹⁴ In its brief (p. 16), petitioner, carefully deleting the words "might be," characterizes this testimony of Rosen as an "admission" that "Tranberg told him the reason he was 'fired' was because 'your work is not satisfactory.'"

¹⁵ Tranberg also told Herman he was confiding in him because he was not a member of the Union (R. 867).

The foregoing facts, we submit, fully warrant the Board's conclusion that Rosen was dismissed because of his union membership and activities. The explanation which Tranberg equivocally suggested to Rosen *might* be the reason, that his work was not satisfactory, was clearly not the true reason.¹⁶ Indeed, the very fact that Tranberg qualified this explanation by asserting that it *might* be the reason, strongly suggests that it was not, and that it was merely a pretext advanced to conceal an unlawful motive. Tranberg's statement to Herman later that the true reason was Rosen's union activities, corroborates this fair inference. Moreover, it was intrinsically unlikely that Rosen, who had previously had a long and highly creditable record at sea, suddenly became so poor a worker as to warrant his discharge, and, indeed, there was substantial direct evidence to the contrary. Quartermaster Hart, a seaman of over 20 years' experience (R. 500), testified, on the basis of his experience and observation of Rosen on board the *Nevada* at this time, that Rosen was "above the average" as a worker (R. 502). Mate David Rosen

¹⁶ Petitioner also advanced essentially the same reason to the Board and now reasserts it to this Court: it claims that Rosen was discharged because he was lazy and inattentive to duty (Brief, pp. 14-15). Elaborating on this theme at the hearing before the the Board, Captain Swanson testified that Rosen was "purely lazy" (R. 1244-1245) and Mate Tranberg asserted that Rosen absented himself from his watch twice and that while on deck duty he would go aft "to take a smoke every half hour or so" (R. 1150-1152). When it was brought to Tranberg's attention on cross-examination that Rosen did not smoke, Tranberg admitted that this latter accusation was based merely on surmise (R. 1192).

of the *Nevada* reluctantly admitted that Rosen “done his work” (R. 1097).

On the other hand, the entire chain of events culminating in Rosen’s discharge strongly suggests, as the Board found, that petitioner dismissed him because it resented his outstanding union activities. These activities had been forcefully brought home to petitioner on the preceding day and on the morning of the discharge, when Rosen protested Buckless’ termination and questioned the new employee, Herman, as to his union status. Tranberg’s declaration to Quartermaster Hart to the effect that Tranberg did not want “that kind of stuff on here” and that he believed he had “got rid of that when [he] got rid of that fellow [Buckless] yesterday,” makes it plain that Tranberg then contemplated further punitive measures against union activities. Tranberg’s subsequent remark to Herman that he had discharged Rosen “on account of union activities” confirms the conclusion that Rosen’s termination was one of these punitive measures. These facts, considered in conjunction with petitioner’s failure to explain the dismissal on any convincing lawful basis, afford more than ample rational basis for the Board’s finding of discrimination. *N. L. R. B. v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, 106–107; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 596–597; *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 146; *N. L. R. B. v. Weyerhaeuser Timber Co.*, 11 L. R. R. 572, decided December 11, 1942 (C. A. A. 9).

2. *The discharge from the S. S. "Washington"*

Following his dismissal from the *Nevada* on April 19, 1938, Rosen was unemployed until June 1, 1938, when he was rehired by petitioner as an able-bodied seaman on the *Washington* (R. 200).¹⁷ Here again Rosen's militant advocacy of the Union and his talent for leadership won recognition from the crew and came prominently to the attention of the ship's officers. Within a few days after he shipped aboard the vessel, Rosen was elected ship's delegate for the unlicensed personnel (R. 275, 285). He revived the institution of union meetings, which had been discontinued (R. 268-269, 415); and as Union representative he presented grievances from time to time to Captain Bergman, who was master of the vessel, and Captain Hand, the port superintendent (R. 275-281, 285-287). Bergman and Hand told Rosen in substance that petitioner did not "recognize any union on this ship," but discussed the grievances with him (R. 276, 295-296). On July 11, 1938, Rosen drafted and signed an open letter from the crew of the *Washington* to the crews of petitioner's other vessels, urging the latter to organize and severely criticizing petitioner for its alleged refusal to ameliorate working

¹⁷ Contrary to petitioner's suggestion (Brief, p. 16), the fact that Rosen was rehired does not subtract from the validity of the Board's finding as to the illegality of petitioner's reason for dismissing him from the *Nevada*. Petitioner's ships operated as separate units in hiring unlicensed personnel (see note 9, p. 9, *supra*). Moreover, as the Board pointed out (R. 1766, note 16), it might equally well be argued that petitioner would not have rehired Rosen if he was in fact negligent and lazy.

conditions on its ships (R. 303-309). Copies of this letter were sent to petitioner's marine general manager, its port superintendent, and other officials (R. 289, 305). On behalf of the crew, Rosen also sent a telegram to the general manager complaining of Bergman's "non-recognition of elected delegates" of the Union on the vessel (R. 289-290).

On July 14, 1938, the *Washington* docked at Port Arthur, and Rosen presented to Captain Hand, who boarded the ship there, a crew grievance relating to overtime pay (R. 293-297). Hand's attitude was openly hostile, but he discussed the matter with Rosen at length, although he refused to recognize Rosen's status as Union delegate (R. 295-297). A little later that afternoon, First Mate Johannesen told Rosen that he was "fired" because "your seamanship is unsatisfactory" (R. 298-299). When Rosen protested and asked for "particular instances" of improper "seamanship," Johannesen declared, "I don't have to give you any reasons for firing you" but admitted, "I haven't got anything against your seamanship" (R. 299). He then told Rosen that alleged slowness at work was responsible for his termination (R. 301).

Petitioner, adhering to substantially the same explanation which it essayed for Rosen's discharge a few months earlier from the *Nevada* (*supra*, pp. 13-14), claimed that Rosen was dismissed from the *Washington* because he was negligent and lazy (Brief, pp. 17-19). But this explanation was no more credible here than it had been in the case of the *Nevada*; there the explanation was advanced merely as a pretext, as the

Board found upon substantial evidence and, indeed, as Mate Tranberg of that vessel admitted (*supra*, p. 13).¹⁸ Moreover, it remained highly improbable that Rosen, who had a record of over 10 years of excellent previous service, suddenly became an incompetent worker, as petitioner would have had the Board believe. And Mate Johannesen's evasiveness in advising Rosen of this allegedly "true" reason for his discharge strongly suggests that it was not *the* reason.

The meritless nature of the defense, as the Board found, is underlined by the unconvincing quality of the testimony of petitioner's witnesses in support of it. Thus, Captain Bergman and Johannesen testified that on various occasions Rosen was negligent and lazy. Bergman's testimony, however, was markedly unspecific; he testified merely that he "watched" Rosen and another seaman from the bridge and "saw that they were men that I would not carry myself if I was the mate on that ship" (R. 1416).¹⁹ And all but one of the instances of Rosen's alleged laziness to which Johannesen testified, occurred during the first of the two voyages on the *Washington* on which Rosen sailed (R. 1541-1544); concerning the second voyage, when, according to Johannesen, Rosen was being given "another chance," there was a paucity of concrete evidence reflecting on Rosen's work: Johannesen merely

¹⁸ "Incompetency" is, of course, a ready elixir to conceal a discriminatory purpose.

¹⁹ The entry in the ship's crew list, stating that Rosen was "discharged for incompetency," having been made by Bergman himself (R. 1396), is obviously a self-serving declaration which is no more persuasive than the latter's testimony.

stated in general and obviously exaggerated terms that Rosen—

* * * absolutely would do nothing; put him to a job, and he would look around, and wouldn't paint. * * * He would go through the motion. He would sit right there in one place. He wouldn't even stand up; sit down (R. 1544).

In these circumstances the Board properly found, as had the Trial Examiner, who, of course, saw and heard the witnesses testify, that “neither Bergman's nor Johannesen's testimony as to Rosen's negligence and laziness is entitled to credence” (R. 1770).²⁰

Upon the foregoing facts the Board's conclusion that Rosen was discharged from the *Washington*, as

²⁰ On the morning of the day of his discharge, Rosen and another seaman displayed a large sign bearing the letters “C. I. O.” over the ship's side, in full view of petitioner's docks (R. 291, 293). In its opinion when this case was originally before this Court, the Court observed that the incident tended to corroborate the testimony of the ship's officers that Rosen was inattentive to duty (R. 1738). The record shows, however, that the sign had been prepared by Rosen on his own time (R. 291). Moreover, petitioner did not claim before the Board that this incident interfered with Rosen's performance of his duties as seaman or was otherwise connected with his dismissal. In view of these facts and those recited in the text, the Board, upon the remand, with full cognizance of the Court's suggestion, nevertheless did not credit the testimony of the ship's officers in this regard. The Board's action may not, of course, be said to be violative of the Court's direction. Plainly, the Court did not intend to substitute its views as to the weight and credibility of evidence for that of the Board. It merely called to the Board's attention, as exclusive trier of the facts, an element in the situation of which, as the Court believed, the Board may not previously have been aware, but it left the ultimate fact-finding decision to the Board, where Congress entrusted it.

he had been from the *Nevada*, because of his union membership and activities, was entirely reasonable. Here, again, petitioner obviously failed to explain Rosen's dismissal on any convincing lawful basis.²¹ On the other hand Rosen's outstanding Union activities, petitioner's manifest hostility, Johannesen's evasiveness in acquainting Rosen with the reason for his banishment, and the entire combination of circumstances before the Board, all point to an unlawful basis for the discharge. The Board's finding that this was the true reason thus has ample rational basis in the record.²² See cases cited *supra*, p. 15.

²¹ Petitioner, for the first time, asserts in its brief (pp. 11-12) that Rosen's display of the sign described above (note 20), was "over the objection of the master and officers" of the ship, constituted a "deliberate attempt" to "ignore the authority of the officers," and was not "conductive" to ship discipline. This contention is demonstrably an afterthought, advanced in a belated effort to conceal petitioner's unlawful purpose by offering still another reason which might have, but obviously did not, prompt petitioner to discharge Rosen. That Rosen's dismissal was not a disciplinary measure provoked by the sign incident is overwhelmingly established by the record. The record conclusively shows that no orders were given countermanding or forbidding the display, and that the ships's officers did not regard the incident as a flouting of their authority or as impairing ship's discipline (R. 291-293, 1571-1572): indeed, Mate Johannesen, who discharged Rosen, testified that he regarded the incident as "child's play" (R. 1571). Moreover, Johannesen did not even mention the incident to Rosen when discharging him, and as we have already indicated (note 20), petitioner did not claim before the Board that the display prompted the discharge; it claimed instead that the discharge was due solely to Rosen's alleged negligence and laziness.

²² Petitioner's assertions that other members of the *Nevada* and *Washington* crews, not discharged, were as active in union affairs as Rosen and that Rosen and Clarence Buckless admitted this

C. Neither general considerations of safety at sea nor the body of marine safety legislation subtract from the validity of the Board's findings

When this case was previously before this Court, as has been briefly noted above (p. 2), the Court held that the proceeding had been conducted by the Board without proper regard to considerations of safety and discipline at sea and particularly the body of Congressional maritime safety legislation (R. 1726, 1737-1738).²³ Accordingly, the Court remanded the

(Brief, pp. 13, 16; see also pp. 19, 28), are without support in the record. Petitioner's citations to the record on this point disclose other seamen, not discharged, participating in union affairs, but none of comparable stature to Rosen. Moreover, even if petitioner's assertions in this regard were supported and the record showed that petitioner retained other employees who were as active as Rosen, this circumstance, we submit, would not override the cogent evidence that petitioner did in fact discriminate against Rosen. The fact that petitioner may have thought it necessary or desirable to retain other union members throws little, if any, light, we think, on the sole question here: whether the Board's finding that petitioner *did* discharge Rosen because of union membership and activities, is supported by substantial evidence. Cf. *Firth Carpet Co. v. N. L. R. B.*, 129 F. (2d) 633, 636 (C. C. A. 2).

²³ This legislation is briefly summarized in the Board's decision as follows (R. 1771, note 18) :

"18 U. S. C. A., Sec. 484, Article 293: provides a fine and imprisonment for a member of a crew unlawfully and by force, fraud, or intimidation, to usurp the command of a vessel from its master.

"46 U. S. C. A., Sec. 701, Articles Fifth and Sixth: provide for the punishment of a crew member for continued wilful disobedience or neglect of duty at sea; and for assaulting a master, mate, or other officer.

"46 U. S. C. A., Sec. 239: provides that inspectors shall investigate all acts of misconduct committed by any licensed officer, whose license shall be suspended if the inspectors are satisfied after a hearing that the officer is incompetent or has been guilty of mis-

case to a “reconstructed” Board for a redetermination of the issues in light of these considerations (R. 1738).²⁴ Thereafter the Board, as appears from the face of its new decision (R. 1771–1776), carefully reconsidered its findings as to petitioner’s unfair labor practices in the light of the Court’s opinion and “the traditional need for safety and discipline aboard ship” (R. 1771), and explicitly evinced a full awareness of the importance of the maritime safety legislation and the considerations of safety and discipline to which the Court had referred in its opinion (R. 1771, 1774), and its own “task of accommodating the ‘scheme’ of the [National Labor Relations] Act to ‘other and equally important Congressional objectives’ ” (R. 1771).

Upon such deliberation the Board concluded that “considerations of maritime safety and discipline give no reason for disturbing our findings” as to petitioner’s interference, restraint, and coercion, in violation of Section 8 (1) of the Act (R. 1774), or for “alter[ing] our conclusion that Rosen was discriminatorily discharged,” in violation of Section 8 (3) and (1)

behavior, negligence, or unskilfulness, or has endangered life wilfully.

“46 U. S. C. A., Secs. 226, 228, 229: provide that licenses of captains, mates, and engineers shall be suspended on satisfactory proof of intemperate habits.

“46 U. S. C. A., Sec. 222: requires that a vessel shall only be operated with a full complement of officers and crew, and provides that a captain is liable to fine or penalty for failing to explain to the local inspectors the reason for any deficiency in complement.”

²⁴ One Judge dissented in this regard. See note 1, p. 2, *supra*.

of the Act (1776).²⁵ We submit that the Board's findings in this regard are entirely warranted by the facts in this case.

The record here makes plain, as the Board found (R. 1775), that there was nothing in Rosen's union activities inconsistent with performance of his duties as a seaman or in anywise violative of law. We have already described these activities, which included general leadership of the crew in routine union matters, instituting and presiding over weekly union meetings held in the crew's quarters, acting as representative of the crew in presenting grievances to the ships' officers and port officials, drafting communications urging the crews of other vessels of petitioner to join the Union and criticizing working conditions and labor policies on petitioner's ships, and protesting to petitioner's general manager the refusal of one of petitioner's captains to recognize union delegates (*supra*, pp. 10-12, 16-17). It is apparent that these are normal and proper activities of employees in the exer-

²⁵ The Board quite properly did not regard the remand as tantamount to a direction to find that petitioner had not discharged Rosen because of his union activities. Such a construction of the the remand would have rendered the remand vain: the Court had ample power to set aside the Board's order with respect to Rosen, as it had done with respect to Buckless, either for want of evidence or lack of foundation in law. Moreover, the fact that the Court remanded Rosen's case while setting aside that of Buckless is an indication that, in the Court's view, upon reconsideration a conclusion of discrimination as to Rosen might properly be reached by the Board even though a contrary inference could also be drawn, and that the Court desired to leave the ultimate decision for determination by the Board.

cise of their right to self-organization for collective bargaining, guaranteed in the Act. As the Board pointed out (R. 1775), there is no suggestion in the record that these normal and proper activities interfered with Rosen's work, endangered the safety of ships' cargoes, or were detrimental to maintenance of discipline on board these ships, within the meaning of the Congressional maritime safety legislation. (See also, note 21, p. 20, *supra*).

Nor may it reasonably be said that normal and usual union activities, such as those in which Rosen engaged, *per se* create otherwise nonexistent dangers aboard ship and interfere with maintenance of discipline and good order. Were this otherwise doubtful, it would be apparent from the fact that Congress, traditionally mindful, as this Court pointed out when this case was previously before it, of considerations of safety and discipline at sea and the special relations between officers and men aboard ship, included seamen in the coverage of the Act;²⁶ obviously, if Congress believed that union activities were in and of themselves inconsistent with maritime safety and discipline, it would not have done so. Moreover, in 1938, Congress by amendment to the Merchant Marine Act of 1936 (49 Stat. 1985), expressly announced a policy of encouraging collective bargaining among maritime employees and affirmed the general applicability of the National Labor Relations Act to such

²⁶ Section 2 (3) of the Act defines employees as "any employee," with certain stated exceptions. Seamen do not appear among the exceptions.

workers.²⁷ And the National Labor Relations Act proceeds upon the Congressional finding, announced in Section 1 of the Act, that "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury * * *." Thus, neither the facts in the instant case, nor general experience, nor the body of Congressional legislation support the view that Rosen's union activities endangered maritime safety or subverted discipline.

Indeed, petitioner made no contrary claim to the Board: it insisted throughout the proceedings, and still insists (Brief, pp. 13-20), that Rosen's union activities were entirely unrelated to his discharges, that other seamen were equally active on behalf of the Union, that "there was nothing unusual in Rosen's activities" in this regard, that there "existed no reason why he should have been discharged for such activities and not the other seamen who were also active," and that his dismissals were caused by his alleged laziness and incompetence (R. 299, 1394, 1396). These asserted deficiencies, the Board found upon substantial evidence, had no relation to his discharges (*supra*, pp. 14-15, 17-20). Moreover, as the Board further found, it was not considerations of discipline and safety which prompted petitioner's officials to dismiss Rosen (R. 1775), but resentment at his union

²⁷ See Section 1002 of the Merchant Marine Act of 1936, which was added in June 1938 by 52 Stat. 965, 46 U. S. C. A., Sec. 1252. This chapter of the Merchant Marine Act expired on June 23, 1942. The Act has consistently been applied by the courts, including the Supreme Court, and the Board to maritime employees.

activity *qua* union activity.²⁸ These findings are amply supported by substantial evidence; hence, they are, of course, conclusive upon the Court. *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, 208–209; *N. L. R. B. v. Link Belt Co.*, 311 U. S. 584, 597, 601–603.

In short, the situation with which the Board was here presented was not one in which the employer had engaged in interference, restraint, and coercion and had discharged the employee because the employee had engaged in activities, on behalf of union organization or otherwise, which endangered safety or subverted discipline on board ship within the meaning of the federal maritime safety statutes. Nor was it one in which it could be said that the employer had acted in good faith out of consideration for such factors. Rather, it was a situation in which, as the Board found on substantial evidence, the employee had engaged in proper and lawful union activities which in no way interfered with discipline or safety at sea, and the employer had discharged the employee because it resented these union activities *qua* union

²⁸ We have already discussed (note 21, p. 20, *supra*) petitioner's belated contention in its brief to the Court (p. 12) that Rosen's display of a C. I. O. banner over the side of the *Washington* on the morning of his discharge was a "deliberate attempt" to "ignore the authority" of the ship's officers and was not "conductive to ship discipline." Petitioner further suggests (p. 12) that because the sign display was "an act of sympathy with a strike of the crew of a local ferry" and did not immediately concern the employees of the *Washington*, it "cannot be considered within the scope of legitimate or proper union activities" (*ibid.*). This contention requires no refutation at this stage of the Act's enforcement. In any event, as we have pointed out (note 20), the incident was not claimed to have provoked Rosen's dismissal.

activities. In such circumstances, we submit, it was not only proper but indeed mandatory upon the Board, in the exercise of the responsibilities entrusted to it by Congress, to find that the employer had flagrantly violated the National Labor Relations Act, and to issue an appropriate order in the public interest sought to be effectuated by the Act. Any other holding would read seamen out of the Act's general protection.

The foregoing considerations, we submit, dispose of this case and require enforcement of the Board's findings.²⁹ However, we think it desirable to discuss

²⁹ *N. L. R. B. v. U. S. Truck Co., Inc.*, 124 F. (2d) 887 (C. C. A. 6), and *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 61, upon which petitioner relies (Brief, pp. 25-26), are plainly inapposite. In the former case the Sixth Circuit denied enforcement to a Board order requiring reinstatement of a truck driver who, as the Board found, had been in fact guilty of drinking while on duty, although the Board also concluded that he had been discharged for discriminatory reasons. The *Southern Steamship* case involved seamen who violated the federal mutiny statutes by engaging in a sit-down strike on board ship, as the Supreme Court held. In the instant case, Rosen engaged in no improper activities on behalf of the Union or otherwise, as we have demonstrated (pp. 23-24).

Petitioner also claims that its conduct did not violate the Act because there is no "evidence" that it in fact discouraged, interfered with, restrained, or coerced employees' union activities (Brief, pp. 27, 28, 36). The coercive effects upon employees of discharges for union activities, and statements, threats, and warnings by the employer against unions, need no elaboration. And it is well settled that the Board need not probe the actual subjective reactions of particular employees. Substantially the same contention as is made by petitioner was made by the employer in *N. L. R. B. v. Schaefer-Hitchcock Co.*, 11 L. R. R. 425, decided November 12, 1942, and rejected by this Court without comment. The issue is fully discussed in the Board's reply brief in that case, to which we respectfully refer the Court.

briefly a misconception which appears in petitioner's brief. This is the notion that the Board's decision amounts to a holding that petitioner's officers "should not have discharged" Rosen but should have "permitted him to remain aboard their vessels despite their better judgment" (Brief, pp. 22-24, 27).³⁰

Of course, the question before the Board was not—it could not be—whether petitioner should have or lawfully could have discharged Rosen because he had engaged in misconduct or was inefficient, or whether petitioner should or must retain him. Petitioner was and is free to discharge him for *any* reason or *no* reason, so long as it is not for the reason forbidden by the Act; i. e., lawful union activities. *Associated Press v. N. L. R. B.*, 301 U. S. 103, 132. The Board may not and does not lay down rules as to what conduct gives an employer license to dismiss an employee, or whether the employer should have done so in particular circumstances. Such an approach would indeed constitute a usurpation of the employer's right to select his own staff. The Board's only inquiry is and can be whether the employer *in fact* discharged the employee for protected union activities.³¹

³⁰ Petitioner's argument assumes, of course, that this "better judgment" was not influenced by Rosen's union activities.

³¹ While, in fashioning its order, the Board is required to accommodate the purposes of the Act to "other and equally important" public objectives, this problem arises only after the factual inquiry of motive has been resolved. See, *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31, 47; *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240; Note, *Employee Misconduct under the Wagner Act: Developments since the Fansteel Case*, 39

In the instant case, the Board's findings properly resolved this factual issue of motive against petitioner. This does not amount to a Board judgment that petitioner should not have or may not discharge Rosen for any or no reason—except the proscribed reason. Petitioner is still free to manage its own business and select its own staff within the proper limits permitted by law. But petitioner may not conceal an unlawful purpose behind pious protestations that proper cause existed which *might* have—but did not—prompt its conduct. Nor, of course, may it shield its unlawful conduct behind assertions of existence of lawful cause which did not in fact exist.

POINT II

The Board's order is valid and proper under the Act

The Board's order is in the usual and judicially approved form upon the findings made: it requires petitioner to cease and desist from the unfair labor practices found, to reinstate Rosen with back pay,³² and to post appropriate notices in conspicuous places

Columbia Law Review 1369; cf. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 193–194. In resolving the issue of motive, the Board frequently considers whether lawful reasons for the discharge which may be advanced by the employer exist, and whether the asserted cause is trivial or serious. But this is solely in order to secure light on the factual question of motive, and is always secondary to that question.

³² The requirement that back pay include the reasonable value of Rosen's maintenance on board ship as part of his compensation is entirely proper, as petitioner does not deny. See *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206.

on its docks and vessels (R. 1779–1781). Petitioner does not contend that the order is improper upon the findings, except that it asserts that the cease-and-desist provisions of the order, quoted in the footnote,³³ are too broad in view of *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426 (Brief, pp. 38–40), and that the posting of notices should be confined to the particular vessels of petitioner involved in the unfair labor practices found to have been committed (Brief, pp. 40–41). Neither objection to the order, we submit, has merit.

The Board's findings reveal that petitioner here engaged in varying acts of interference, restraint, and coercion directly violative of Section 8 (1) of the Act, and in discriminatory discharges violative of Section 8 (3). These are precisely the unfair labor practices from which petitioner is directed to cease and desist. Such provisions of Board orders were recently enforced by this Court upon similar

³³ Cease and desist from—

“(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or *in any other manner* discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in any such labor organization;

“(b) *In any other manner* interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act. [Italics added.]

findings in *N. L. R. B. v. Schaefer-Hitchcock Co.*, 11 L. R. R. 425, decided November 12, 1942; *N. L. R. B. v. Weyerhaeuser Timber Co.*, 116 R. R. 572, decided December 11, 1942; and by the Supreme Court in *N. L. R. B. v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, enforcing 26 N. L. R. B. 1182, 1235; *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, enforcing 18 N. L. R. B. 591, 640. See also *N. L. R. B. v. Hollywood-Maxwell Co.*, 126 F. (2d) 815, 818 (C. C. A. 9).

The provision of the Board's order requiring posting and maintenance of appropriate notices on all of petitioner's docks and vessels (R. 1780-1781), is also a proper exercise of the Board's "informed discretion" in determining measures necessary to expunge the effects of petitioner's unfair labor practices. *Phelps-Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 195; *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 82. Identical provisions have been enforced by the Supreme Court in other cases involving maritime employers. E. g., *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, enforcing 7 N. L. R. B. 237, 253; *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31, 49, enforcing in pertinent part 23 N. L. R. B. 26, 48 (par. "g"). See, also, *Black Diamond S. S. Corp. v. N. L. R. B.*, 94 F. (2d) 875 (C. A. A. 2), cert. denied 304 U. S. 579, enforcing 3 N. L. R. B. 84, 96; *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. (2d) 480 (C. C. A. 5), cert. denied 313 U. S. 582, enforcing 12 N. L. R. B. 1367, 1383. Petitioner cites no decisions to the contrary.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue denying the petition to review and set aside the Board's order, and granting enforcement of the order in full.

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JANUARY 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

(3) The term “employee” shall include any employee, * * * but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

* * * * *

SEC. 10 (e) * * * No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objec-

tion shall be excused because of extraordinary circumstances. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), * * * and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

United States Circuit Court of Appeals

For the Ninth Circuit

No. 10237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONER'S REPLY BRIEF.

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United States Circuit Court of Appeals

For the Ninth Circuit

No. 10237

THE TEXAS COMPANY,

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NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONER'S REPLY BRIEF.

Reply to Point I.

A. As to the alleged interference, restraint and coercion in violation of Section 8(1) of the Act.

The Board endeavors to sustain its findings and conclusion that petitioner interfered with, restrained, and coerced its employees on its vessel, the *S.S. California*, by contending that certain utterances and statements made by two mates on such vessel constituted "oral coercion" (Board's Brief, p. 7).

It should be noted, and the Board does not dispute the fact, that these alleged statements and utterances were confined to the *S.S. California* and that although the Board's complaint charged that petitioner had discharged two seamen, namely, J. Gordon Rosen and James Blasingame, from such vessel for union activities, the Board itself, after a hearing, held that Rosen and Blasingame were not discharged for union activities from that vessel (R. 100). The only issue, therefore, is whether the statements *in themselves* constituted an unfair labor practice within the meaning of Section 8(1) of the Act, since no finding was made by

the Board that petitioner had in any other way interfered with, restrained or coerced its employees in so far as the *S.S. California* is concerned.

In support of its argument that the statements alone interfered with, restrained, and coerced employees of petitioner in the exercise of their rights, the Board cites a number of decisions by the United States Supreme Court and by this Court, but an examination of such decisions discloses that in no one of such decisions was it held that anti-union statements *in themselves* constituted restraint or coercion in violation of the National Labor Relations Act. In fact, in every one of those cases it was plainly evident that the respondents by their very action and conduct had carried out and put into effect the statements charged to them. In the case of *National Labor Relations Board v. Schaefer-Hitchcock Co.*, decided by this Court November 12, 1942, it is apparent that the two supervisors charged with making anti-union utterances were found to have actually sponsored a company meeting of employees to discuss whether the employees should join a union. One of such supervisors made a speech at a meeting discouraging the formation of a new union. There was no evidence of instructions by officials of the company on union policy. Here the company was held not only to have dominated the so-called company union but also to have discharged a number of employees for engaging in union activities. In addition to the anti-union statements, the Court found actual intimidation and coercion.

In the cases of *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, and *National Labor Relations Board v. Link-Belt Company*, 311 U. S. 584, it is quite evident that whatever anti-union statements were made were not in themselves considered a violation of the Act, but only when coupled with conduct

resulting in the discharge of employees for union activities. In fact, in the *Link-Belt Company* case the United States Supreme Court said (at p. 598) :

“* * * The employer’s attitude towards an ‘outside’ union *coupled with* the discharge of Salmons and Novak for activities on behalf of Amalgamated would tend to have as potent an effect as direct statements to the employees that they could not afford to risk selection of Amalgamated.”

In the cases of *National Labor Relations Board v. Hearst*, 102 F. (2d) 658, and *National Labor Relations Board v. Sunshine Mining Company*, 110 F. (2d) 780, both decided by this Court, it is likewise clear that anti-union remarks alone were not considered sufficient by the Court to justify a finding of the existence of an unfair labor practice. In the *Sunshine* case the company’s foreman formed an unlawful group of so-called “Vigilantes” who drove the organizers of the union out of the region, had posted a notice on the bulletin board stating that the company would only bargain with groups to the extent of their membership, and the general manager of the plant had stated that he would not sign an agreement with the union. The company here was found to have refused to bargain and to have discharged certain union leaders.

The Board also relies on the case of *National Labor Relations Board v. Virginia Electric and Power Company*, 314 U. S. 469, but an examination of the Supreme Court’s opinion in that case discloses that the Court very definitely held that anti-union statements *alone* do not constitute a violation of the Act. On this point, the Court said (at p. 477) :

“* * * Neither the Act nor the Board’s order here enjoins the employer from expressing its view on labor policies or problems, nor is a penalty imposed upon it because of any utterances which it has made.

The sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees. The employer in this case is as free now as ever to take any side it may choose on this controversial issue. But, certainly, conduct, though evidenced in part by speech, may amount, *in connection with other circumstances*, to coercion within the meaning of the Act.” (Italics ours.)

And also, at page 479:

“It is clear that the Board specifically found that those utterances were unfair labor practices, and it does not appear that the Board raised them to the stature of coercion by reliance on the surrounding circumstances. *If the utterances are thus to be separated from their background, we find it difficult to sustain a finding of coercion with respect to them alone.*” (Italics ours.)

As pointed out in petitioner’s main brief, it should be borne in mind that although the original complaint charged petitioner with engaging in unfair labor practices in respect to twelve seamen, all of these charges have since been dismissed except the charge pertaining to one seaman, namely, Rosen, which is now before this Court, and that as to the *S.S. California*, the Board itself found that the two employees who were alleged to have been discharged for union activities, namely J. Gordon Rosen and James Blasingame, were not so discharged. There is, therefore, no evidence in the record that the statements, if made, resulted in any interference, restraint, or coercion in violation of rights guaranteed by the Act. *Press Co., Inc. v. National Labor Relations Board*, 118 F. (2d) 937 (C. C. A., Dist. of Columbia).

The Board intimates, however, that even if Rosen was not discharged for union activities from the *S.S. California*, nevertheless the statements above referred to led to his subsequent discharge from petitioner’s vessel, the *S.S.*

Nevada, on April 19, 1938 (Board's Brief, p. 9). Since Rosen left the *S.S. California* in September, 1937, it is difficult to believe that statements made by officers on that vessel motivated officers on an entirely different vessel, the *S.S. Nevada*, in discharging him for union activities from such vessel *seven months later*. To a reasonable mind it would seem that if the statements had any bearing at all on Rosen's discharge the Board would have found that the officers who made the statements discharged him. Yet, the Board did not so find! In any event, the burden of proof in showing that hostility toward a union resulted in an unfair labor practice clearly rests on the Board. *Interlaken Iron Corp. v. National Labor Relations Board*, 131 F. (2d) 129, 133 (C. C. A 7th).

The Board also contends that the persons charged with making the alleged anti-union statements, namely Mates Baldwin and David Rosen, occupied such positions aboard the *S.S. California* that petitioner cannot avoid responsibility for their statements. Even assuming this to be the case, which petitioner disputes, the authorities cited by Board's counsel are clearly inapplicable, since it is quite evident from an examination of the record that petitioner not only never approved or was aware of the statements alleged to have been made but, in fact, had instructed the officers on its vessels not to discriminate between its employees because of union activities or affiliations. (See Petitioner's Brief, pp. 31-36.) Since, as petitioner contends, the record wholly fails to show that the utterances of Mates Baldwin and Rosen, if made, were approved by or reflect the policy of petitioner, or that such utterances actually resulted in the slightest interference, restraint, or coercion in violation of the Act, the Board has improperly found petitioner responsible for such utterances. *E. I. DuPont De Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388 (C. C. A. 4th).

B. As to the alleged discriminatory discharge of Rosen.

In attempting to show that Rosen was discharged from the *S.S. Nevada* for union activities and not for laziness and neglect of duty, the Board relies primarily on (1) Rosen's testimony that he was an active union leader, (2) Rosen's experience at sea and (3) the testimony of Herman and Hart (Board's Brief, pp. 9-13).

As to whether Rosen's activities as a union leader were a reason for his discharge, no better answer need be given than his own admission that other seamen were just as active as he, namely, Lee Holmes and Sidney Cole (R. 228, 235). Rosen's testimony in this connection was corroborated by his fellow seaman, Clarence Buckless (R. 783-785), who added seamen Lee Arnold and Jensen and who also testified that these other active union men were not discharged (R. 784-785). All of these seamen, except Buckless, remained aboard petitioner's vessels. As to Buckless, the Board found he had not been discharged for union activities from the *S.S. Washington* and this Court found he was properly discharged for drunkenness from the *S.S. Nevada*. *The Texas Company v. National Labor Relations Board*, 120 F. (2d) 186.

In its brief, the Board contends that these employees were not of "comparable stature" to Rosen (Board's Brief, pp. 20-22). This conclusion is not only contrary to Rosen's own testimony, but is rather amazing, particularly in so far as Buckless is concerned, in view of the Board's statement in the brief which it filed in the first case before this Court that Rosen and Buckless were "the outstanding Union leaders on the ships in which they sailed" and that no other seamen were of "comparable stature". (See Board's Brief in Case No. 9518, p. 15.)

In this connection it is most significant that although the Board's complaint charged that both Rosen and Buckless had been discharged for union activities at the same time and from the same vessels (*S.S. Nevada* and *S.S. Washington*) nevertheless the Board itself found as pointed out above, that Buckless had been discharged for drunkenness from the *S.S. Washington*, and this Court held he had been properly discharged for the same reason from the *S.S. Nevada* (R. 108, 111). *Under these circumstances it is difficult to understand how the Board can in good faith assert that the testimony of petitioner's officers was not entitled to credence in the case of Rosen's discharge from the S.S. Washington when it found the same officers acted justifiably in the case of Buckless.* (See Board's Brief, p. 19; R. 1770.)

As for Rosen's experience at sea, the record shows that over a period of ten years he was employed by more than ten different companies (R. 373) and that he shifted from one company and ship to another at will (R. 373-374). Although he hesitated to commit himself, he admitted that he had probably been fired from other ships (R. 403, 404). Certainly, this does not justify the Board's characterization of Rosen's record at sea as "highly creditable" (Board's Brief, p. 14).

The testimony of Hart and Herman has already been adverted to by petitioner in its principal brief and need not be discussed further here (Brief for Petitioner, p. 14).

* * * * *

Even if this Court should hold that Rosen was discharged from the *S.S. Nevada* for union activities the record is devoid of substantial evidence to support the Board's conclusion that Rosen was similarly discharged three months later (July 14, 1938) from the *S.S. Washington*.

In its brief the Board points to no evidence as to the reasons for Rosen's discharge from that vessel other than Rosen's own uncorroborated testimony (Board's Brief, pp. 16-20). In other words, the only evidence in the record is Rosen's own assertions that he was an active union leader and that on a number of occasions he, along with others, presented grievances to Captain Bergman (Board's Brief, pp. 16-20).

In this connection it should be observed that practically all of Rosen's testimony, on which the Trial Examiner and the Board relied, consisted of notes made by him of conversations he himself had with others and conversations between others which he overheard, and which he read into evidence (R. 270-303; 379). Petitioner moved to strike such evidence from the record on the ground Rosen's notes were hearsay and should only have been used to refresh the witness' recollection (R. 16, 58). The Trial Examiner denied such motion (R. 16) and was sustained by the Board (R. 86, 87).

Although the Board is given a good deal of discretion in applying the generally accepted rules of evidence, this Court has condemned the practice of accepting hearsay evidence without any requirement of actual corroboration. *National Labor Relations Board v. Union Pacific Stages*, 99 F. (2d) 153, 176 (C. C. A. 9th). Here, the testimony was uncorroborated and clearly prejudicial. Such evidence was, therefore, incompetent and should not be used as a basis to support findings of the Board. *National Labor Relations Board v. Bell Oil & Gas Co.*, 98 F. (2d) 870 (C. C. A. 5th).

As opposed, on the other hand, to Rosen's uncorroborated testimony, a large part of which, as shown above, was hearsay and otherwise incompetent, is the testimony of Captain Bergman and Chief Mate Johanneson of the *S.S. Washington* that Rosen was lazy and inattentive to his duties (Brief for Petitioner, pp. 16-19).

Corroborative of this testimony was the vessel's crew list, in which Captain Bergman had noted that Rosen had been discharged for "incompetency" (Brief for Petitioner, p. 18). Despite its own reliance on mere notes of conversations made by an interested party, the Board seeks to minimize the weight to be attached to the entry in the crew list, calling it a self-serving declaration (Board's Brief, pp. 18, 19). The keeping of a crew list is a regular part of a Master's duties on every voyage, and it is even required by statute on foreign voyages that the crew list be filed with the Collector of Customs (46 U. S. C. A. 677). An entry made on such a list as this, therefore, is clearly an entry made in the regular course of business and entitled to weight as such.

In attempting to answer petitioner's argument that Rosen was discharged for laziness and neglect of duty, counsel to the Board, as pointed out above, referred to Rosen's ten years of experience as a seaman (Board's Brief, p. 10). It is submitted that this fact is irrelevant and immaterial. It is not contended that Rosen was incompetent, but that he was deliberately inattentive to his duties. Obviously, experience at sea is no proof of the fact that he was not or could not have been lax in his duties. In fact, this Court indicated that such might have been the fact when it considered this case the first time. *The Texas Company v. National Labor Relations Board*, 120 F. (2d) 186, 190.

C. As to the Board's contention that neither "general questions of safety at sea nor the body of maritime safety legislation subtracts from the validity of the Board's findings".

In support of its conclusion that despite the body of Congressional maritime legislation referred to by this Court in its previous opinion in this case, the Board had properly

concluded that Rosen was discharged for union activities, the Board's counsel argue that there was nothing in Rosen's activities inconsistent with the performance of his duties as a seaman or in anywise violative of law (Board's Brief, p. 23). We think an adequate answer to this contention is the previous opinion of this Court condemning Rosen for proceeding "to agitate among the seamen" and his conduct in using the structure of the vessel itself to display on its side a large C. I. O. banner as she came into port, even though the officers of the ship had disapproved. (See 120 F. (2d) 186.)

Clearly, if Rosen was engaged in such conduct, *which he himself admits*, could he have been or was he attentive to his duties? Moreover, does not such fact lend credence to the testimony of the two officers of petitioner on the *S.S. Nevada* and the two officers of petitioner on the *S.S. Washington*, that he was neglectful of his duties and was discharged for such reason?

Further, the Board argues that there is "no suggestion in the record that these normal and proper activities interfered with Rosen's work, endangered the safety of ships' cargoes, or were detrimental to maintenance of discipline on board these ships, within the meaning of Congressional maritime safety legislation" (Board's Brief, p. 24). It seems to us that the Board has misapprehended the purpose and scope of the maritime safety statutes. It was not necessary for Rosen to stir up a mutiny or a riot on board ship in order to endanger the safety of the vessel or interfere with ship's discipline. If he neglected his duty in any respect or if he disregarded the commands of his superior officers, as is charged and proved here, there was justification for the conclusion that discipline was interfered with or the safety

of the vessel endangered. In fact, he may even have violated the Federal statute making it a crime by "intimidation" to "usurp the command of a vessel from its officers" (18 U. S. C. A. 484), or the statute providing for punishment of a crew member for "continued willful disobedience or neglect of duty at sea" (46 U. S. C. A. 701, Articles Fifth and Sixth).

This is obviously what this Court had in mind in its first opinion in this case (120 F. (2d) 186), and which, more recently, the United States Supreme Court spoke of in its opinion in the case of *Southern Steamship Company v. National Labor Relations Board*, 62 S. Ct. 886.

Moreover, it should be borne in mind that the Nation is now at war and that discipline and attention to duty are more important than in normal times. If the Board's order is sustained and Rosen is to be reinstated despite the testimony of the officers of petitioner's vessels as to his neglect of duty, and particularly in the light of his own admission that he ignored his superior's commands respecting the display of the C. I. O. banner, the masters of petitioner's vessels can hardly be expected to maintain discipline aboard ship or be responsible for the safety of vessel, cargo and crew.

It is submitted that this case is clearly distinguishable from the ordinary case, and that, as pointed out by the Circuit Court of Appeals for the Fifth Circuit in *Peninsular and Occidental Steamship Company v. National Labor Relations Board*, 98 F. (2d) 411 (cert. den. 305 U. S. 653), great weight is to be given a master's testimony and he should not be held bound to retain under his supervision seamen whom he considers unfit or unsatisfactory in view of the responsibilities imposed upon him by federal statutes.

Reply to Point II.

A. As to the blanket cease and desist provisions of the order.

The Board offers no answer to petitioner's contention that paragraphs "a" and "b", and particularly "b", of the Board's order are improper in the light of *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426, except to assert that similar provisions in Board orders have been enforced by this Court and by the United States Supreme Court. An examination, however, of the authorities cited by the Board does not disclose that the point in question was raised in those cases. It is entirely possible that the records in such cases will show that blanket "cease and desist" provisions were included in the Board's orders. Assuming that to be so, it is quite obvious that unless the respondents in those cases raised the point, it cannot be said that the Courts have approved such provisions in the light of the *Express Publishing Company* case.

Petitioner insists that any cease and desist provision of a Board order which provides, as in this case, that petitioner shall cease and desist from "*in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, etc.*" is clearly disapproved by the Supreme Court's opinion in the *Express Publishing Company* case for lack of specificity. (See Petitioner's Brief, pp. 38-40.)

B. As to the provision of the Board's order requiring posting and maintenance of appropriate notices on all of petitioner's docks and vessels.

The authorities cited by the Board do not deal with the specific question of where and in what manner cease and desist notices should be posted. It is, of course, possible that the records in those cases will reflect that a broad post-

ing order was made. However, in the absence of any controversy over that issue, the authorities cited by the Board do not sustain its contention that the Board's order in this case is proper.

As contended in petitioner's main brief, the alleged violations of the National Labor Relations Act in this case occurred on three vessels, namely, the *S.S. California*, the *S.S. Nevada*, and the *S.S. Washington*. There is no charge that any violation of law was committed on any of the numerous other vessels of petitioner. In fact, many of these vessels were in distant ports when the alleged acts of violation occurred. Certainly, therefore, the determination of the existence of unfair labor practices on one vessel does not warrant an order for the posting of cease and desist notices on any other vessel.

Conclusion.

The Board's petition for enforcement should be denied and the Board's decision and order herein should be set aside as prayed for herein and in petitioner's original brief.

Respectfully submitted,

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January 26, 1943.

United States Circuit Court of Appeals

For the Ninth Circuit 8

No. 10237

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REHEARING

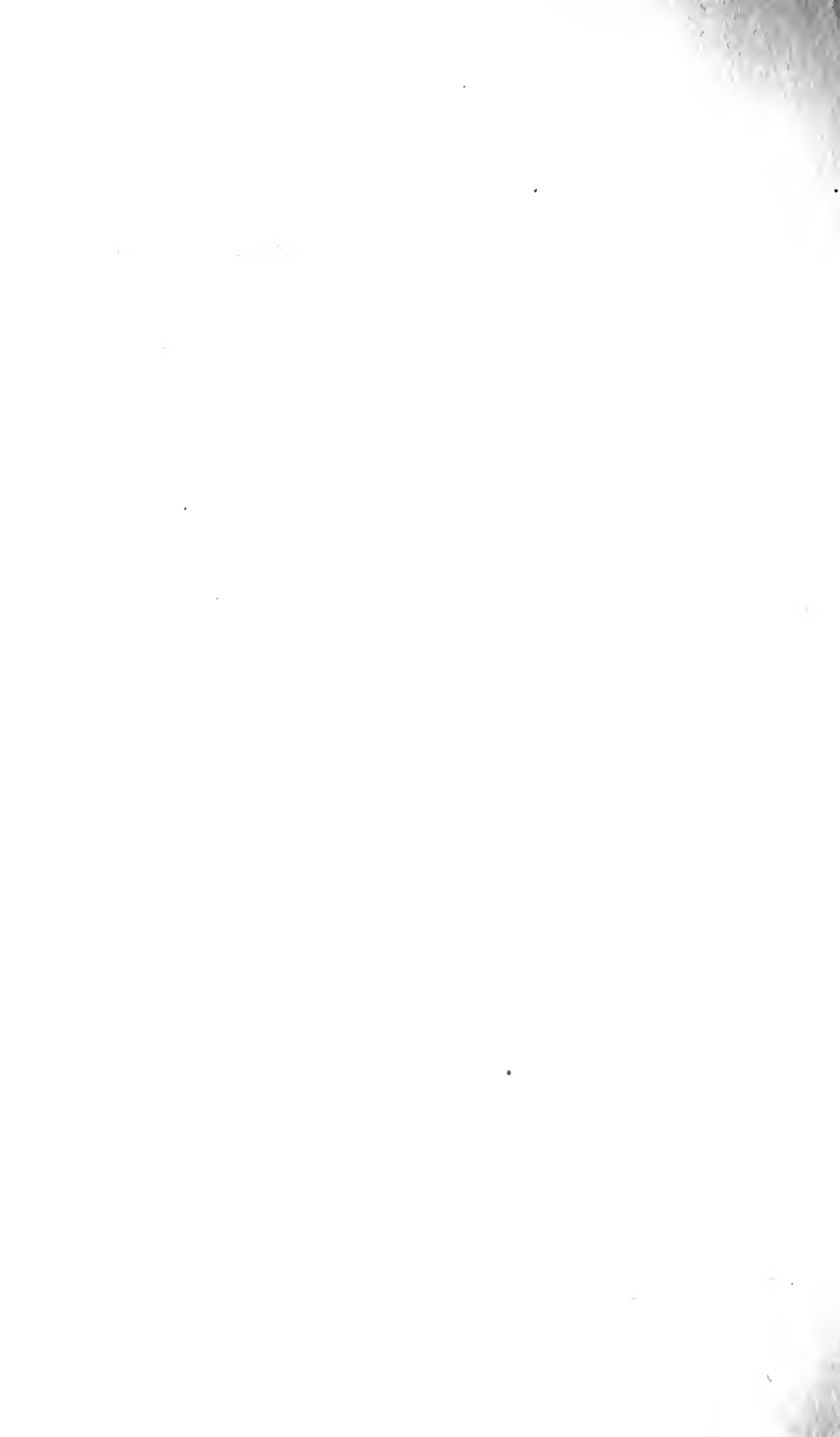
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IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10,237

April 29, 1943.

PETITION FOR REHEARING

To the Honorable, The Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Petitioner, The Texas Company, respectfully requests a rehearing in the above case, on the following grounds:

1. The Court's opinion is in conflict with the recent decision of this Court in *National Labor Relations Board v. Citizen News Company*, No. 9995, decided April 2, 1943 (not yet officially reported).

2. In holding that the Board was within its powers in concluding that Rosen's discharges were pursuant to anti-union statements made by Petitioner's Mate Baldwin, the Court erroneously assumes that the Board concluded that Rosen's discharges were due to such statements.

3. The Court did not expressly dispose of Petitioner's Point III, namely, that the Board had improperly directed Petitioner to cease and desist from "in any other manner" interfering with, restraining, or coercing its employees.

I. As to the First Ground for Rehearing:

In its opinion in this case, the Court refers to a number of statements made by Mate Baldwin to seamen Rosen and Blasingame and concluded that: "This evidence is sufficient to warrant the Board's findings of interference, restraint and coercion".

It was contended by Petitioner that before these oral statements could be held to be an unfair labor practice there must exist something more than the statements themselves, or, in other words, evidence that the statements resulted in *acts* of interference, restraint or coercion. (See Petitioner's Reply Brief, pp. 1-4.)

In *National Labor Relations Board v. Citizen News Company*, No. 9995, decided by this Court on April 2, 1943, and after the argument of the case at bar, this Court held that anti-union statements *per se* did not constitute interference, restraint and coercion in view of the decision of the Supreme Court in the case of *National Labor Relations Board v. Virginia Electric and Power Company*, 314 U. S. 469. In so holding, this Court said:

"The Board, at the time of its decision herein, had held in the case of the Virginia Electric and Power Company that advancement of arguments against a labor union or the expression of unfavorable opinion concerning it, or advising the employes against joining, was *per se* an unfair labor practice, and its above finding was evidently made on that basis.

"The Supreme Court, however, in the case of *N. L. R. B. v. Virginia, etc.*, *supra*, affirmed the right of an employer to freely express his opinion to his employes as one guaranteed to him by the Constitution. The Supreme Court held that the employer had a right to make statements for the express purpose of preventing the employes from joining a particular

union so long as the employer did not threaten or take action to prevent or coerce its employes in the exercise of their rights under the National Labor Relations Act. We have in this case the same situation that was considered by the Supreme Court in the Virginia case, namely, a finding by the Board that by certain specific statements of the employer it had been guilty of coercion.”

It is significant that at about the same time as this Court decided the *Citizen News Company* case the Circuit Court of Appeals for the Second Circuit reached the same conclusion in a similar case. See *National Labor Relations Board v. American Tube Bending Company* (C. C. A. 2nd Cir.) decided April 5, 1943, reported in 12 L. R. R. 285.

There is nothing in the record in the case at bar or in the Board’s brief that in any way indicates that Baldwin’s statements, quoted above by this Court, led to or resulted in acts by Petitioner that might be considered unfair labor practices. On the contrary, the Board’s findings as to interference, restraint and coercion, as set forth in the Board’s decision of January 24, 1940 (R. pp. 91, 94), read as follows:

“B. Interference, restraint, and coercion.

* * *

“We find that the respondent, by warning its employees against organization, threatening to discharge union members, and questioning an employee about membership in the Union, has interfered with, restrained, and coerced its employees *on the S.S. California* in the exercise of the rights guaranteed in Section 7 of the Act.”

It will be noted that the Board found that these statements discouraged membership in the Union *only in so far as the S.S. California was concerned* and not as to the S.S.

Nevada and the *S.S. Washington*, which are the only vessels involved in this proceeding. Furthermore, the Board also found that neither Rosen nor Blasingame were discharged for union activities from the *S.S. California* (R. 100). It is obvious, therefore, that the Board's findings as to "interference, restraint, and coercion" are based solely on oral statements.

Assuming, therefore, that Rosen was improperly discharged from the *S.S. Nevada* and the *S.S. Washington*, as this Court now holds, it cannot be argued that Baldwin's statements led to or resulted in such discharges since (1) he (Baldwin) was not an officer on either of such vessels, (2) the Board admits that each vessel was operated as a separate unit (R. 1766, note 16; Board's Brief, p. 9, note 9), and (3) the Board nowhere contends that such statements, which were made on the *S.S. California*, had anything to do with Rosen's discharges from the *S.S. Nevada* and the *S.S. Washington* (R. 1759-1762).

Petitioner respectfully urges, therefore, that the decision of this Court in the *Citizen News* case is indistinguishable from this case, in so far as the effect to be given the above quoted statements is concerned, and that, consequently, this Court should hold that there is no evidence to sustain the Board's general finding of interference, restraint and coercion, all of which is based entirely on oral statements.

II. As to the Second Ground for Rehearing:

The Court also held that "The Board was within its powers in concluding that these discharges were pursuant to the anti-union attitude of petitioner as shown from the testimony concerning Baldwin's statements."

In making this statement Petitioner believes that the Court is erroneously assuming that the Board did conclude that Rosen's discharges were due to Baldwin's statements.

As pointed out above, the Board did *not* so conclude. The Board merely found that such statements resulted in interference, restraint and coercion in so far as the *S.S. California* was concerned. (See the Board's "Findings of Fact", R. pp. 1759-1762.) The Board in no way, either expressly or impliedly, attributed Rosen's discharges from the *S.S. Nevada* and the *S.S. Washington* to these statements.

The very same situation is involved in the *Citizen News Company* case above referred to in which the complaint alleged interference, restraint and coercion as well as discriminatory discharges, and yet this Court refused to enforce the Board's order since it did not appear that the statements charged to the respondent resulted in or caused the discharges.

If the foregoing conclusion is correct, and Petitioner believes it is, then Petitioner respectfully requests the Court to reexamine the record respecting Rosen's discharge from the *S.S. Washington*, since, on eliminating Baldwin's statements from consideration, there is nothing to support the charge that Rosen was discharged for union activities from such vessel, other than his own testimony that he was an active union man. (See Petitioner's Brief, pp. 16-21.) The Board does not dispute this in its brief since all the testimony cited and relied on by the Board is Rosen's own. (See Board's Brief, pp. 16-20.)

The case is four square, therefore, with the *Citizen News Company* case where the Court refused to enforce a Board order based only on the employee's testimony as against the testimony of the employer that he was inefficient. As to this the Court said, in the *Citizen News Company* case, through WILBUR, J.:

"We find no substantial evidence of discrimination in the discharge of Lugoff. Circumstances that merely raise a suspicion that an employer may be

activated by unlawful motives are not sufficiently substantial to support a finding.

“The fact that a discharged employee may be engaged in labor union activities at the time of his discharge, *taken alone*, is no evidence at all of a discharge as the result of such activities. There must be more than this to constitute substantial evidence.” (Italics ours.)

In the light of this decision, it would seem that although the Board may properly have held that Rosen was discharged for union activities from the *S.S. Nevada* because of the testimony of Herman and Hart, the Board improperly concluded that Rosen was later discharged for union activities from the *S.S. Washington*.

Petitioner respectfully submits, therefore, that, at most, Rosen is not entitled to reinstatement but only to back pay from the time he was discharged from the *S.S. Nevada* to the time he was hired as a seaman on the *S.S. Washington*.

III. As to the Third Ground for Rehearing:

The Court, in its opinion, does not expressly dispose of Petitioner's assignment of error that the Board had improperly directed Petitioner to cease and desist from “in any other manner” interfering with, restraining, or coercing its employees. (Petitioner's Brief, p. 38.)

In view of the decision of the Supreme Court in *National Labor Relations Board v. Express Publishing Company*, 61 S. Ct. 693, Petitioner believes it is now well settled that blanket “cease and desist” provisions similar to paragraph “(b)” of the Board's order are improper.

Petitioner urges the Court, therefore, to modify the Board's order so as to strike paragraph “(b)” therefrom. Otherwise, Petitioner fears that it may be faced with contempt proceedings every time it commits an act which the

Board deems to be in violation of the Act, and be deprived of a hearing on the merits in respect to the alleged violations.

Conclusion.

For the reasons above stated, and particularly in view of the recent decision of this Court in the *Citizen News Company* case, Petitioner prays for a rehearing in this case and that, on such rehearing, the Court modify its decision in the following respects:

1. Deny enforcement of the Board's order in so far as it finds "interference, restraint and coercion" based solely on oral statements.

2. Deny enforcement of the Board's order in so far as it directs Rosen's reinstatement.

3. Modify the Board's order so as to strike paragraph "(b)" therefrom.

Dated: New York, N. Y., May 17, 1943.

THE TEXAS COMPANY

By JAMES TANHAM
Vice President

ALBERT E. VAN DUSEN
135 East 42nd Street
New York City, N. Y.

J. A. McNAIR
929 So. Broadway
Los Angeles, California
*Attorneys for Petitioner,
The Texas Company.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JAMES TANHAM, being duly sworn, deposes and says: that he is an officer, to wit, Vice President, of The Texas Company, the Petitioner named in the foregoing petition; that he has read the foregoing petition by him subscribed as such officer and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein related to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES TANHAM

Subscribed and sworn to before me this 17th day of May, 1943.

LEONARDA C. TYMECKI

[SEAL]

Notary Public, Queens County. Clerk's No. 3949, Register's No. 4376, N. Y. Co. Clerk's No. 450, Reg. No. 4T256.

My commission expires March 30, 1944.

Certificate of Counsel.

I, ALBERT E. VAN DUSEN, attorney of record for the Petitioner herein, hereby certify that in my opinion the foregoing Petition for Rehearing is well founded and meritorious, and that it is not interposed for purposes of delay.

ALBERT E. VAN DUSEN

United States
Circuit Court of Appeals
For the Ninth Circuit.

SECTION SEVEN CORP., a corporation,
Appellant,

VS.

CLIFFORD C. ANGLIM, Collector of Internal
Revenue for the First District of California,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

OCT 10 1942

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

SECTION SEVEN CORP., a corporation,
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vs.

CLIFFORD C. ANGLIM, Collector of Internal
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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LOUIS H. BROWNSTONE, Esq.,

615 Russ Building

San Francisco, California

Attorneys for Plaintiff and Appellant

HON. FRANK J. HENNESSY, Esq.,

United States Attorney

ESTHER B. PHILLIPS,

Assistant U. S. Attorney

Post Office Building

San Francisco, California

Attorneys for Defendant and Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 21651-W

SECTION SEVEN CORP., a corporation,
Plaintiff,

vs.

CLIFFORD G. ANGLIM, Collector of Internal
Revenue for the First District of California,
Defendant.

COMPLAINT FOR RECOVERY OF TAXES

Now comes plaintiff, and for cause of action against defendant alleges, as follows:

1. This action is brought to recover capital stock taxes erroneously and illegally assessed, collected and paid. The amount of this action, to-wit, the sum of \$1051.00, does not exceed the sum of \$10,000.00. Said taxes were collected by the above named defendant, who was at the time of the collection of said tax, and now is, and at all times herein mentioned, was the United States Collector of Internal Revenue, for the First District of California. Jurisdiction of this Court is based upon the provisions of Section 24, Subdivision 20, of the Judicial Code as amended, Title 28 U. S. C. A. Section 41, subdivision 20.

2. Plaintiff herein is now and was at all times herein mentioned, a corporation organized and existing under and [1*] by virtue of the laws of the State of California.

*Page numbering appearing at foot of page of original certified Transcript of Record.

3. Within the time and in the manner provided by law, plaintiff filed with defendant a capital stock tax return under the provisions of Section 1200-1207 of the Internal Revenue Code of 1939, as amended, for the year ending June 30, 1939, showing a capital stock tax liability of \$1051.00. On August 30, 1939, plaintiff paid said tax to defendant in the amount of \$1051.00. Said tax was erroneously paid and collected for the reason that plaintiff was not carrying on or doing business for any part of the year ending June 30, 1939, and by reason thereof, plaintiff was not liable for the payment of any capital stock tax for the year ending June 30, 1939.

4. Within the time and in the manner and form required by law, and on November 18, 1939, a claim for refund was duly and regularly filed with the Collector of Internal Revenue for the First District of California, defendant above named, for the refund of the sum of \$1051.00, as and for capital stock tax erroneously and illegally assessed and collected. In said claim for refund, the ground relied upon for refund, was that set forth in this complaint, to-wit, that plaintiff was not carrying on or doing business for any part of the year ending June 30, 1939. Subsequent to the filing of said claim for refund, the Commissioner of Internal Revenue rejected said claim for refund in its entirety and on February 19, 1940, said Commissioner gave written notice of such rejection as provided by Statute. The rejection by the Commissioner of Internal

Revenue of said claim for refund to the extent of \$1051.00 was erroneous and improper.

5. Plaintiff is entitled to a refund of the said sum of \$1051.00 for the reason that plaintiff was not carrying on or doing business for any part of the year ending June 30, 1939, the year for which said capital stock tax, in the sum of \$1051.00 had been paid. [2]

6. No part of the sum of \$1051.00 erroneously assessed and collected from plaintiff, as aforesaid, or any interest on said sum has been repaid or refunded and the whole thereof, to-wit, the sum of \$1051.00 together with interest thereon, as provided by law, is now due and owing to plaintiff.

7. No assignment or transfer of said claim has ever been made and plaintiff is still the sole owner thereof, and plaintiff is justly entitled to the amount herein claimed from defendant and there are no just credits or offsets against said claim known to plaintiff.

Wherefore plaintiff prays judgment against defendant for the sum of \$1051.00 together with interest thereon from August 30, 1939, at the rate of 6% per annum to a date preceding the date of the refund check by not more than thirty days and together with plaintiff's costs of suit herein incurred.

LOUIS E. GOODMAN

LOUIS H. BROWNSTONE

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 23, 1940. [3]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Clifford G. Anglim, Collector of Internal Revenue for the First District of California, by his attorneys, Frank J. Hennessy, United States Attorney for the Northern District of California, and Esther B. Phillips, Assistant United States Attorney for the Northern District of California, and for answer to the complaint of the plaintiff alleges:

I.

Defendant admits the allegations contained in paragraph numbered 1 of the complaint, except that defendant specifically denies that the capital stock taxes involved in this action were erroneously and/or illegally assessed, collected and paid.

II.

Defendant admits the allegations contained in paragraph numbered 2 of the complaint.

III.

Defendant admits that plaintiff filed a timely capital [4] stock tax return for the year ended June 30, 1939, and paid capital stock taxes thereon in the amount and at the time stated in paragraph numbered 3 of the complaint.

Defendant denies all of the other allegations contained in said paragraph numbered 3 of the complaint.

IV.

Defendant admits that plaintiff filed a timely claim for refund upon the grounds stated in paragraph numbered 4 of the complaint and that the Commissioner of Internal Revenue rejected the claim for refund at the time stated.

Defendant denies all of the other allegations contained in said paragraph numbered 4.

V.

Defendant denies the allegations contained in paragraph numbered 5 of the complaint.

Further answering, defendant alleges that during the taxable period ended June 30, 1939, plaintiff was carrying on and doing business within the meaning of the applicable internal revenue laws and the regulations of the Secretary of the Treasury promulgated thereunder.

VI.

Defendant admits that no part of the capital stock taxes paid by plaintiff for the period ended June 30, 1939, has been refunded to the plaintiff.

Defendant denies all of the other allegations contained in paragraph numbered 6 of the complaint.

VII.

Defendant admits that plaintiff is the owner of the claim for taxes involved in this action.

Defendant denies all of the other allegations contained in paragraph numbered 7 of the complaint.

Wherefore, having fully answered the complaint of the plaintiff, defendant prays that this action be dismissed and that defendant have judgment against the plaintiff for his costs and disbursements herein.

FRANK J. HENNESSY

United States Attorney

ESTHER B. PHILLIPS

Assistant United States

Attorney

Attorneys for Defendant.

[Endorsed]: Filed Dec. 6, 1940. [6]

[Title of District Court and Cause.]

DECISION

This is an action to recover capital stock taxes for the year ending June 30, 1939. The amount of tax, as shown by the tax return, \$1,051.00, was paid August 30, 1939. On November 18, 1939, a claim for refund was filed based on the claim that plaintiff was not carrying on or doing business during the tax year. The claim was rejected by the Commissioner of Internal Revenue and thereafter this action instituted.

It is the conclusion of the Court, from the evidence submitted upon the trial, that this case falls within the rules applied by the Circuit Court of Appeals of this Circuit in the case of *Kettleman Hills*

Realty Syndicate v. Commissioner of Int. Rev., 116 Fed. (2d) 382, and the case of United States v. Trust No. B. I. 35, 107 Fed. (2d) 22. It is, therefore, the conclusion of this Court that this action should be dismissed and that defendant have judgment against plaintiff for his costs [7] and disbursements herein as prayed for.

It is so ordered.

Dated this 28th day of February, 1942.

/s/ FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed Feb. 28, 1942. [8]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause coming regularly on for trial on the 15th day of January, 1942, jury having been waived, the plaintiff appearing by its attorney, Louis Goodman, the defendant appearing by his attorneys, Frank J. Hennessy, United States Attorney for the Northern District of California, and Esther B. Phillips, Assistant United States Attorney, and evidence oral and documentary, having been received, and the cause having been argued and submitted, and the Court having rendered his

opinion on the law and the evidence, now makes the following

Findings of Fact

I.

The plaintiff was duly incorporated under the laws of California in November, 1937, for the purpose of acquiring interests of tenants in common in Section 7, Township 20, Range 16 E. M. D. B. & M., Fresno County, California. The plaintiff acquired [9] said interests and issued stock therefor.

II.

On June 3, 1938, plaintiff made a lease of said interests to the Seaboard Oil Company of Delaware, whereby the lessee was granted the exclusive right to explore, drill for, produce, treat, sell, etc. all oil and gas, asphaltum and other hydrocarbons therein for the period of twenty years, and for as long thereafter as oil, gas, etc. continued to be produced. The lessee agreed to pay a royalty on all oil produced equal to 1/6th of its value, and a 1/6th part of the net proceeds of all gas produced and sold. The lease gave the lessor the option of receiving the oil royalty not in cash, but delivered in tanks on the leased premises, provided that 60 days' notice of the exercise of the option were given. The option could be exercised once during the year, and in the absence of exercise, the lessee would pay the royalties in cash.

III.

Drilling was done, pursuant to the terms of the lease, and oil was found in September, 1938. The first royalties were paid in October, 1938. The option to receive oil was not exercised. Oil continued to be produced and by June 30, 1939, the plaintiff had received oil royalties amounting to \$29,409.29 and gas royalties amounting to \$22.35. Plaintiff received no other income save a nominal sum for rights of way given pursuant to the custom of the industry.

IV.

The plaintiff filed its capital stock tax return for the year ending June 30, 1939, and paid a tax of \$1,051.00 to the defendant on August 30, 1939. On November 18, 1939, a claim for refund was made on the ground that plaintiff was not carrying on business during the year. It was thereafter rejected.

[10]

V.

The corporate activities of the plaintiff Company were exercised through its officers and Board of Directors, and consisted chiefly in receiving royalties and distributing them as dividends to its stockholders. It had no regular employees, its expenditures consisted of miscellaneous expenditures for telephone and office supplies, taxes and fees of accountant and attorney.

From the foregoing findings of fact, the Court renders the following

Conclusions of Law

(1) That plaintiff was doing business under the

rule applied in *Kettleman Hills Syndicate v. Comm'r*, 116 Fed. (2d) 382; *United States vs. Trust No. B. I.*, 107 Fed. (2d) 22.

(2) That judgment should be entered for defendant, with costs.

FRANK H. NORCROSS

United States District Judge.

[Endorsed]: Filed Apr. 27, 1942. [11]

In the District Court of the United States for the
Northern District of California, Southern
Division.

No. 21651-W

SECTION SEVEN CORP., a corporation,
Plaintiff,

vs.

CLIFFORD C. ANGLIM, Collector of Internal
Revenue for the First District of California,
Defendant.

JUDGMENT

The above-entitled cause coming regularly on for trial on January 15, 1942, jury having been waived, and the cause having been argued and submitted, and the Court having rendered his opinion, and having made his findings of fact and conclusions of law, it is

Hereby Ordered, Adjudged and Decreed that the plaintiff is not entitled to recover the tax refund

demand and judgment is hereby entered in favor of defendant with costs as may be taxed. Costs \$16.00.

FRANK H. NORCROSS

United States District Judge.

Dated: April 24, 1942.

[Endorsed]: Filed Apr. 27, 1942. [12]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS

Notice Is Hereby Given that Section Seven Corp., a corporation, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment heretofore rendered in the above entitled action and entered in this action on April 27th, 1942, and from the whole thereof.

Dated: July 16th, 1942.

LOUIS E. GOODMAN

LOUIS H. BROWNSTONE

Attorneys for Plaintiff and
Appellant.

615 Russ Building

San Francisco, California

[Endorsed]: Filed July 18, 1942. [13]

[Title of District Court and Cause.]

STIPULATION AS TO CONTENTS OF
RECORD ON APPEAL

Now come the parties in the above entitled proceeding, by their respective counsel and make the following stipulation and agreement designating the contents of record on appeal.

For the purpose of the review herein the parties hereto hereby designate for inclusion in the record on appeal the following:

- (1) Docket entries of the proceedings Before the District Court.
- (2) Pleadings before the District Court.
- (3) Findings of Fact and Conclusions of [14] Law and Judgment of the District Court.
- (4) Opinion of the District Court.
- (5) Notice of Appeal.
- (6) Statement of evidence attached hereto and marked Exhibit A.
- (7) This stipulation designating the contents of the record on appeal.
- (8) Order of the District Court respecting the sending of the original exhibits to the Circuit Court of Appeals in lieu of copies thereof.
- (9) All exhibits introduced in evidence in the District Court.

It is further stipulated that the foregoing constitutes the complete record and all of the proceedings in evidence in the action and that no statement

of points on which appellant intends to rely need be filed.

Dated: July 17th, 1942.

LOUIS E. GOODMAN

LOUIS H. BROWNSTONE

Attorneys for Plaintiff

FRANK J. HENNESSY

Attorney for Defendant. [15]

[Title of District Court and Cause.]

EXHIBIT A

STATEMENT OF EVIDENCE

The following is a statement of evidence in narrative form in the above entitled case.

This cause came on for hearing before Honorable Frank H. Norcross, District Judge, on January 15, 1942, at and in the City and County of San Francisco, State of California; Louis H. Brownstone was called as a witness on behalf of plaintiff and having been first duly sworn testified as follows:

I am the secretary of Section Seven Corp., the plaintiff in this action; the corporation was formed in November of 1937 and acquired the property situated in Fresno County, California, [16] known and described as Section 7, Township 20, South Range 16 East, M. D. B. & M.

Prior to the formation of the corporation and for many years the legal title to the property stood in

Exhibit A—(Continued)

the name of the Mercantile Trust Company and subsequent to 1911, equitable title belonged to a number of different owners. Over a period of years, various of the owners died. A committee, which had been appointed by the owners in 1911 to direct the disposal of the property by Mercantile Trust Company, had dissolved by reason of the death of all of the members of the committee, so that title to the property was in a highly confused state. In order to clear title to the property, it was necessary to bring a partition suit. In that way, the corporation could acquire clear title and have the power to make a lease. The co-owners deeded their respective interests to the corporation and subsequent to the formation of this corporation, a lease, dated June 3, 1938, was entered into with the Seaboard Oil Company of Delaware.

Whereupon counsel for plaintiff offered in evidence, a lease between plaintiff and Seaboard Oil Company of Delaware dated June 3, 1938, as an exhibit for plaintiff, and without objection, the said document was received in evidence and marked plaintiff's Exhibit #1.

Exhibit A—(Continued)

PLAINTIFF'S EXHIBIT No. 1

OIL AND GAS LEASE

by and between

SECTION SEVEN CORP., Lessor

and

SEABOARD OIL COMPANY OF DELAWARE,

Lessee

Dated: June 3, 1938.

OIL AND GAS LEASE

This Agreement, made and entered into this 3rd day of June, 1938, by and between Section Seven Corp., a California corporation, party of the first part, herein styled "Lessor", and Seaboard Oil Company of Delaware, a Delaware corporation, party of the second part, herein styled "Lessee",

Witnesseth:

That for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by these presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole

Exhibit A—(Continued)

and exclusive right to the Lessee to explore for, drill for, discover, produce, extract, treat, transport, take, sell and otherwise dispose of generally and handle and turn to account for the sole use and benefit of the Lessee, all oil, gas, asphaltum and other hydrocarbons (and water for its operations upon said premises and other properties operated by the Lessee in the Coalinga-Guijarral Hills Area) from, and to store the same (together with products from other properties operated by Lessee in the Coalinga-Guijarral Hills Area) upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all wells, casing, tools, machinery, sump holes, tanks, storage, reservoirs, pipes, pipe lines, roads, garages, telephone, telegraph and electric lines, plants, buildings, structures, and all other improvements, fixtures and appliances of any nature or character whatsoever which the Lessee may desire in carrying on its business and operations on said land, or adjoining or neighboring premises operated by Lessee, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a refinery, topping plant and/or other plant or plants with all necessary appurtenances, for the refining and/or treatment and/or extraction of gasoline and/or other products from oil and/or gas produced from said land and/or other premises in the

Exhibit A—(Continued)

vicinity of said land, including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes; provided, however, that the oil produced from the leased land be stored separately from and not commingled with the oil produced from other lands operated by the Lessee until such time as such oil shall be gauged and tested, and provided further, that no general crude oil refinery or tank farm shall be erected upon the leased land in which more than fifty per cent (50%) of the oil refined or stored is produced from land other than the leased land. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which occupation and use shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is subject to this lease is situated in the County of Fresno, State of California, and is described as follows, to wit:

All Section Seven (7), Township Twenty (20) South, Range Sixteen (16) East, M. D. B. & M., except the following:

Parcel 1. East 43.6 acres of that certain 92.22 acre lot, which would otherwise be the West Half ($W\frac{1}{2}$) of the Southwest Quarter

Exhibit A—(Continued)

(SW $\frac{1}{4}$) of said Section 7, as shown on the official Township Plat filed with the Surveyor General's Office, San Francisco, California, February 28, 1855.

Parcel 2. Northeast Quarter (NE $\frac{1}{4}$) of Northeast Quarter (NE $\frac{1}{4}$); North Half (N $\frac{1}{2}$) of Southeast Quarter (SE $\frac{1}{4}$) of Northeast Quarter (NE $\frac{1}{4}$); Southeast Quarter (SE $\frac{1}{4}$) of Southeast Quarter (SE $\frac{1}{4}$) of Northeast Quarter (NE $\frac{1}{4}$) of said Section 7.

To Have and to Hold the same unto the Lessee, its successors and assigns, for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty on oil the equal one-sixth ($\frac{1}{6}$) part of the value of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b.s., computed at the market price posted and paid in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any

Exhibit A—(Continued)

one calendar year upon sixty (60) days previous written notice, Lessee shall deliver Lessor's royalty oil into tanks on the leased premises and store the same free of charge for thirty (30) days at Lessor's risk, provided that if said royalty oil shall not be removed by Lessor within said thirty (30) days, the Lessee may take and sell Lessor's royalty oil at said market price posted and paid on the day the Lessee shall sell such oil and if no such price shall then be posted and paid, at the reasonable value thereof. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the sale of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty the one-sixth ($1/6$) part of the net proceeds from the sale of such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported from the land hereby leased and such meter readings, together with the results of content tests by recognized methods made at approximately regular intervals, at

Exhibit A—(Continued)

least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. The proportion of the gas credited to this lease which shall be used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil bearing formation which is being produced from by a wells or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. If the Lessee shall at any time be unable to sell the whole or any part of the dry gas produced from the leased lands and shall store such dry gas either in or on the leased lands or in or on other lands, the Lessor shall pay to the Lessee its proportionate part of the cost of transporting such gas to the place of storage and of the storage thereof at the time such stored gas shall be reproduced and sold, but such cost shall be deducted only from Lessor's royalty upon such stored dry gas so reproduced and sold. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making its own connections at a point designated by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

Exhibit A—(Continued)

3. Any casinghead gasoline extracted from gas produced from said land shall, at the option of the Lessee, be returned to the oil produced therefrom and shall be treated as a part thereof, in which event the Lessor's proportionate part of the actual transportation and extraction costs shall be deducted from its oil royalty or paid to the Lessee if the Lessor shall be taking its oil royalty in kind; otherwise the Lessee shall pay to the Lessor as royalty for such extracted gasoline the equal one-sixth ($1/6$) part of the net proceeds of the sale thereof after deducting actual transportation and extraction costs. If the right to manufacture such gasoline or other products from said gasoline is contracted out by the Lessee to its subsidiaries or to others, and such right so to contract is hereby granted by Lessor to Lessee, Lessor shall receive as royalty one-sixth ($1/6$) part of the net receipts of the Lessee from such contract; provided, however, that such contract shall be bona fide and that the price contracted to be paid shall at the time of the making of such contract be reasonable under prevailing conditions affecting the industry. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline at such price and on such terms as shall be fair and reasonable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

Exhibit A—(Continued)

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas, gasoline, or water produced by the Lessee from said land and used by it in operating the leased land, but it may use such oil, gas, gasoline and water free of charge.

5. It is expressly understood and agreed that the considerations expressed and/or referred to herein include all rental for the term hereof.

6. The Lessee agrees to commence drilling operations on said land within one year from the date this lease is executed and delivered (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable, or until said well shall be by Lessee abandoned; or Lessee may at any time within said period terminate this lease and surrender said land as hereinafter provided. In the event the Gatchell No. 2 well, located approximately 330 feet south and 330 feet east of the southwest corner of Section 7 aforesaid should be drilled by Lessee or by Petroleum Securities Company, a corporation, or jointly by Lessee and Petroleum Securities Company, to completion and such well should on a thirty (30) day production test produce oil in commercial quantities, then and in that event, but subject nevertheless to all the other terms, provisions and conditions hereof, within

Exhibit A—(Continued)

ninety (90) days from and after said production test, Lessee shall commence operations for the drilling of a well on the property covered hereby located approximately 990 feet north and approximately 330 feet east of the southwest corner of said Section 7, and such well shall be deemed an offset well to said Gatchell No. 2 well.

7. If the Lessee shall elect to commence drilling operations on said land as provided in Paragraph 6 hereof and shall prosecute the same with reasonable diligence but oil or gas is not found in the first well drilled in paying quantities, or shall drill to a depth at which further drilling would in the judgment of the Lessee be unprofitable or until said well shall be abandoned by the Lessee, this lease shall nevertheless remain in full force and effect if within ninety (90) days after the abandonment of said first well the Lessee shall commence on said land drilling operations for a second well, and shall prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable, or until said well shall be abandoned by Lessee; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in

Exhibit A—(Continued)

any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many wells as shall equal the total acreage then held under this lease divided by twenty, whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed ninety (90) days from the date of completion of the well last preceding it. The Lessee shall be entitled to drill as many additional wells on said land as it desires. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated, but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency (federal, state or local) subscribe to or be subject to. Drilling and producing

Exhibit A—(Continued)

operations hereunder may also be suspended at all times when there is not being offered generally and paid to producers in the Coalinga-Guijarral Hills oil field for oil of the quality and in the quantity produced from said land a price of seventy-five (75) cents or more per barrel at the well, subject to the obligation of the Lessee to drill and produce offset wells as hereinafter provided when wells offset are being produced.

9. If any well completed by the Lessee shall fail to produce oil in paying quantities but shall produce gas in paying quantities, the Lessee shall not be obligated to conduct any further drilling operations on the land subject to this lease (except the drilling of offset wells as hereinafter provided), unless and until in its judgment the drilling of additional wells under the provisions of this lease is warranted in view of existing and anticipated market requirements. If the Lessee shall complete one or more wells on the land subject to this lease which shall fail to produce oil in paying quantities, but shall produce gas in paying quantities, the Lessee may either sell so much of said gas as it may be able to find a market for and pay the Lessor the royalty provided herein to be paid on the volume of gas so sold, or the Lessee may, if it so elects, suspend the operation of such gas well or wells, from time to time, and, if it is not then producing oil from any other well or wells on the land subject to this lease, it shall, for the period of such suspension,

Exhibit A—(Continued)

pay or tender to the Lessor as rental monthly in advance a sum equal to eighty-five (85) cents per acre for so much of the land as is then held under this lease, such rental to continue until the production of either oil or gas is resumed and royalties are paid to the Lessor as above provided. If and when the Lessee shall have completed one well to each eighty (80) acres held under this lease and such wells shall not produce oil in paying quantities but shall produce gas in paying quantities, then the Lessee shall, notwithstanding any of the provisions of Paragraph 8 hereof or elsewhere contained in this lease to the contrary, hold all of the land free of further drilling obligations. The Lessee shall be entitled to drill as many additional gas wells on said lands as it desires. Nothing in this paragraph contained shall add to the number of wells which the Lessee is required to drill, or accelerate any of the Lessee's drilling operations hereunder.

10. There is hereby expressly reserved to the Lessor and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's obligations shall not nor shall its burdens thereby be altered, increased

Exhibit A—(Continued)

or enlarged, but the Lessee may continue to operate the leased premises and settle rents and royalties as an entirety.

11. In the event that a well is drilled upon adjoining property within 350 feet of the exterior limits of any land at the time retained by Lessee under this lease, and oil or gas is produced therefrom in paying quantities and the drilling requirements as specified in Paragraph 8 hereof are not then fully complied with and the owner of such well shall operate it and market the oil or gas produced therefrom, then the Lessee agrees that, if it is not then drilling upon the lands leased hereby and if such well shall not be offset by a well theretofore drilled or then drilling on the lands leased hereby, it will offset such well by the commencement of drilling operations upon the lands leased hereby within ninety (90) days after it is ascertained by the Lessee that the production of oil or gas from such well on adjoining property is in paying quantities and that the operator thereof is then producing and marketing the oil or gas produced therefrom, or within ninety (90) days after the completion of any well then drilling by the Lessee, whichever time shall be the later. Any such offset well shall be located on or near a line parallel with the common property boundary line and approximately 330 feet therefrom and shall be located at a distance from the intersection of said parallel line with a line drawn through the well to be offset and

Exhibit A—(Continued)

perpendicular to said common property boundary line of not to exceed approximately 660 feet. Any such offset well shall be drilled to the same zone or zones from which the well to be offset is producing oil or gas in paying quantities, if the Lessee determines that such zone or zones would be productive of oil or gas in paying quantities in the offset well, otherwise to any zone or zones which the Lessee determines will produce oil or gas in paying quantities. For the purpose of satisfying any of the obligations imposed upon the Lessee by this lease such offset well or wells shall be counted and considered as any other well required to be drilled pursuant to this lease. Notwithstanding the foregoing provisions of this lease, but nevertheless subject to all the other terms, provisions and conditions of this lease, in the event any substantial area of lands immediately adjoining and within 1,000 feet of any exterior boundary of the lands leased hereby, and from which oil is being produced in paying quantities from the same zone or zones from which oil is then being produced by the Lessee hereunder, should be developed with more than one well producing oil or gas in paying quantities to each twenty (20) acres, then and in that event the Lessee shall develop a like area of the lands at that time subject to this lease and adjacent thereto to the same well density (i.e., with the same number of wells to each twenty (20) acres thereof) as such adjoining lands (the extent of such area and the

Exhibit A—(Continued)

location thereof to be determined by the Lessee). Notwithstanding anything herein contained the Lessee shall not ever, in any event, be required to drill more than one well to each ten (10) acres of land subject to this lease as an average regardless of where drilled, and one offset well drilled pursuant to the provisions hereof may serve as an offset to two or more wells.

12. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, injunctions, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

13. Water produced by the Lessee from the leased lands but not used by it in its operations hereunder, may be used by the Lessor at Lessor's cost, risk and expense for surface operations on said land.

14. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in each year, and five-sixths ($5/6$) of the taxes levied and assessed against the petroleum mineral rights in the land then retained by the Lessee. The Lessor agrees to pay all taxes on the land as such and on its improvements and on its oil stored on the leased land

Exhibit A—(Continued)

and one-sixth ($1/6$) of the taxes levied and assessed against the petroleum mineral rights in the land then retained by Lessee. In the event the State, United States or any municipality levies a license, severance, production or other tax on or measured by the oil, gas or other hydrocarbons produced hereunder, then and in that event the Lessee shall pay five-sixths ($5/6$) of said tax and the Lessor shall pay one-sixth ($1/6$) of said tax. All taxes on land quitclaimed by Lessee shall be paid by Lessor.

15. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land.

16. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon, and shall hold the Lessor harmless from any thereof. The Lessee shall promptly notify the Lessor of any judicial proceedings brought to the attention of the Lessee affecting the leased land.

Exhibit A—(Continued)

17. Upon the written request of the Lessor, the Lessee agrees to fence all sump holes or other excavations to safeguard livestock on said land.

18. The Lessee shall have the right at any time and from time to time during the term hereof, and within ninety (90) days from and after the expiration of the term hereof, or any sooner termination of this lease, whether by reason of forfeiture, surrender or otherwise, to remove from said land any and all property of every kind, character and description placed upon said land by Lessee, and whether affixed thereto or not. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

19. If royalty oil is payable in cash, Lessee may deduct therefrom a proportionate part of the actual cost of treating unmerchantable oil produced from said premises to render same merchantable. In the event such oil is not treated on the leased land, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to and from the treating plant. Nothing herein contained shall be construed as obligating the Lessee to treat oil produced from the leased land. If the Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality as that removed from the leased land for the Lessee's own account, and if the Lessee's own oil shall be treated before such removal, the Lessor's oil will be treated therewith before delivery to the Lessor, and the

Exhibit A—(Continued)

Lessor in such event will pay a proportionate part of the actual cost of treatment and transportation to and from the treating plant.

20. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within ninety (90) days after the written notice from the Lessor so to do, then, at the option of the Lessor, the Lessor may terminate this lease, and upon such termination all rights of the Lessee in and to said land shall be at an end, saving and excepting ten (10) acres surrounding each well producing oil or gas or being drilled, and saving and excepting any land upon which Lessee has constructed any storage tanks, buildings, pumping plants, refineries, topping plants, shops, water wells, gasoline or other extraction or treating plants, or any other improvements of any nature or character whatsoever, and saving and excepting rights-of-way necessary for Lessee's operations; provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten Dollars (\$10.00) to the Lessor as and for fixed and liquidated damages, quitclaim to the Lessor all the right, title and interest of the Lessee in and to the leased land in respect of which it has made default, and thereupon all rights and obligations of the parties hereto, one to the other, shall cease and terminate as to the land quitclaimed.

21. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing

Exhibit A—(Continued)

or delivering a check therefor to the Lessor at 615 Russ Building, San Francisco, California, or at such other address as it may designate by notice in writing, provided however that in the event the Lessor shall assign or transfer any portion of its royalty to more than two persons, then such payments shall be made to Bank of America National Trust and Savings Association, California-Montgomery Branch, San Francisco, California, hereby designated by the Lessor as depository. In such event the Lessor hereby grants to said depository full power and authority in behalf of the Lessor, its successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties, shall be binding on the Lessee until it has been furnished with satisfactory written evidence thereof.

22. Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens or encumbrances (not made, done or suffered by the Lessee) now or hereafter existing, levied or assessed on or against the above described land; and, in the event it exercises such option, the Lessee shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien or encumbrance, any royalty or rental accruing hereunder.

Exhibit A—(Continued)

23. If and when any oil produced from the demised premises shall be unmarketable at the well at the price mentioned in Paragraph 8 hereof, the Lessor agrees in such case to take and receive its royalty in kind, and should it fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but at not less than the price the Lessee may be receiving for its own oil of the same quality.

24. The words "drilling operations" as used in this lease shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

25. On the expiration or sooner termination of this lease, the Lessee shall quietly and peaceably surrender possession of the land to the Lessor and deliver to it a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by the Lessee. Before removing the casing from any abandoned well the Lessee shall notify the Lessor of its intention so to do, and if the Lessor, within five (5) days thereafter, shall inform the Lessee in writing of the Lessor's desire to convert such well into a water well, and *and* for that purpose to retain and purchase casing therein, the Lessee will leave therein such amount of casing as the Lessor may require for said purpose, provid-

Exhibit A—(Continued)

ing such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that the Lessor pay to the Lessee fifty per cent (50%) of the original cost of the casing on the ground.

26. Notwithstanding anything herein contained, the Lessee may at any time quitclaim this lease in its entirety or, from time to time, quitclaim this lease as to any part or parts of the land covered hereby, and thereupon the Lessee shall be released from all further obligations and duties as to the land so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All land quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall revert in the Lessor, free and clear of all claims of the Lessee, except that the Lessor, its successors or assigns, shall not drill any well on the land quitclaimed within four hundred (400) feet of any producing or drilling well retained by the Lessee.

27. If this lease shall be assigned as to a particular part or as to particular parts of the leased land, such division or severance of the lease shall constitute and create separate and distinct holdings under the lease of the several portions of the leased land as thus divided, and the holder or owner of each such portion of the leased land shall be required to comply with and perform the Lessee's obligations under

Exhibit A—(Continued)

this lease for, and only to the extent of, its portion of the leased land, and performance thereof shall be sufficient to protect and validate this lease as to its portion of the leased land notwithstanding the obligations of the lease may not be fully performed as to another part or portion thereof. In any such case the provisions of Paragraph 26 hereof shall be applicable to the owner or holder of each such portion of the leased land. Any assignee of the Lessee as to a particular part or particular parts of the leased lands shall assume the performance of this lease with respect to the part or parts assigned.

28. There is attached hereto, marked Exhibit "A", a section plat showing thereon the proposed location of wells, and notwithstanding any of the other terms and conditions hereof, wells drilled on the land leased hereby in accordance with the express terms, provisions and conditions of this lease at the locations shown on said plat shall fully satisfy all obligations of the Lessee hereunder with respect to the location of wells for the exploration, development and protection from drainage of the leased land as long as said spacing plat is being followed in the drilling of wells upon adjacent lands.

Notwithstanding any of the terms, provisions and conditions of this lease, the Lessee shall be obligated at no time and in no event to operate more than one string of tools upon the land, from time to time, subject to this lease, allowing ninety (90) days between the completion of one well and the commencement of drilling operations on the next suc-

Exhibit A—(Continued)

ceeding well, and the Lessor agrees that such one string of tools shall fully satisfy all obligations of the Lessee for the exploration, development and protection from damage of the leased land.

No implied covenant for exploration, development, or protection from drainage, of the land from time to time, subject to this lease, shall be read into this lease requiring the Lessee to drill or to continue drilling on said land, or to produce oil or gas therefrom, or fixing the measure of diligence for drilling or production. The parties hereto agree that the express covenants contained in this lease cover completely all phases of the Lessee's obligations with respect to the leased land including, without limiting the generality of the foregoing, its obligations in regard to exploration, development and protection from drainage of any and all zones underlying the land subject to this lease, and that such express covenants shall alone define the obligations of the Lessee notwithstanding the fact that the Lessee shall, at any time, be operating adjoining lands for the production of oil or gas therefrom.

29. All notices herein provided for shall be in writing, and no such notice shall be sufficient unless it shall be enclosed in a sealed envelope, and said envelope deposited in the United States mail, either at San Francisco, California, or at Los Angeles, California, with postage thereon fully prepaid, registered and with return receipt requested, and addressed to the Lessor at 615 Russ Building, San Francisco, California, or to the Lessee at Subway

Exhibit A—(Continued)

Terminal Building, Los Angeles, California (or to such other person or corporation at such address as the Lessee may hereafter designate by notice to Lessor). Either party may change such address by notice in writing given to the other party.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

[Seal] SECTION SEVEN CORP.

By LOUIS E. GOODMAN

Pres.

By LOUIS H. BROWNSTONE

Sec.

Lessor

[Seal] SEABOARD OIL COMPANY
OF DELAWARE,

By C. P. WATSON

Vice President.

By C. E. TABER

Assistant Secretary.

Lessee

Whereas, the Board of Directors of this corporation, Section Seven Corp., has authorized the execution by this corporation of that certain contract dated the third day of June, 1938, by and between Seaboard Oil Company of Delaware as first party and this corporation as second party, relating to

Exhibit A—(Continued)

those certain lands situated in Fresno County, California, to wit:

All Section Seven (7), Township Twenty (20) South, Range Sixteen (16) East, M. D. B. & M., except the following:

Parcel 1. East 43.6 acres of that certain 92.22 acre lot, which would otherwise be the West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of said Section 7, as shown on the official Township Plat filed with the Surveyor General's Office, San Francisco, California, February 28, 1855.

Parcel 2. Northeast Quarter ($NE\frac{1}{4}$) of Northeast Quarter ($NE\frac{1}{4}$); North Half ($N\frac{1}{2}$) of Southeast Quarter ($SE\frac{1}{4}$) of Northeast Quarter ($NE\frac{1}{4}$); Southeast Quarter ($SE\frac{1}{4}$) of Southeast Quarter ($SE\frac{1}{4}$) of Northeast Quarter ($NE\frac{1}{4}$) of said Section 7;

Whereas, pursuant to said contract, this corporation, as lessor, has agreed to execute to Seaboard Oil Company of Delaware, as lessee, that certain oil and gas lease of the lands hereinabove described, a copy of which said oil and gas lease is attached to said contract marked Exhibit "B" thereto;

Whereas, said oil and gas lease has been presented to and read and considered by the Board of Directors of this corporation;

Whereas, the Board of Directors of this corporation deem the terms and conditions of, and the consideration for, said oil and gas lease to be for the

Exhibit A—(Continued)

best interest of this corporation, and it is necessary and advisable that said oil and gas lease be executed by this corporation and by Seaboard Oil Company of Delaware and deposited in escrow with California Pacific Title and Trust Company, San Francisco, California, as escrow agent pursuant to the instructions set forth in paragraph 6 of said contract and so that said oil and gas lease may be delivered upon said contract being and becoming effective in accordance with the terms and conditions set forth in paragraph 6 of said contract:

Now, Therefore, Be It Resolved, that the President or Vice President and Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed to make, execute and deliver for and in behalf of this corporation and as its corporate act and deed, said oil and gas lease by and between this corporation, as lessor, and Seaboard Oil Company of Delaware, as lessee, of those certain lands situated in Fresno County, California, hereinabove more particularly described;

And Be It Further Resolved, that said oil and gas lease when so executed be deposited with California Pacific Title and Trust Company as escrow agent for delivery upon said contract hereinabove referred to being and becoming effective in accordance with the terms and conditions set forth in Paragraph 6 thereof.

Louis H. Brownstone, Secretary of Section Seven Corp., a California corporation, does hereby certify

Exhibit A—(Continued)

that the foregoing resolution is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said corporation on the 3rd day of June, 1938; that said resolution is in full force and effect and has not been altered, repealed or amended; that the foregoing oil and gas lease to which this certified copy of said resolution is attached is the oil and gas lease referred to in said resolution of the Board of Directors; that said oil and gas lease was executed by said Section Seven Corp. under authority of said resolution of the Board of Directors of said corporation and with the approval of said oil and gas lease, including the principal terms of the transaction and the nature and amount of the consideration, by the written consent of shareholders entitled to exercise a majority of the voting power of said corporation, and that the Articles of Incorporation of said corporation do not require, on such proposal, the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

Witness my hand and the seal of said corporation this 9th day of June, 1938.

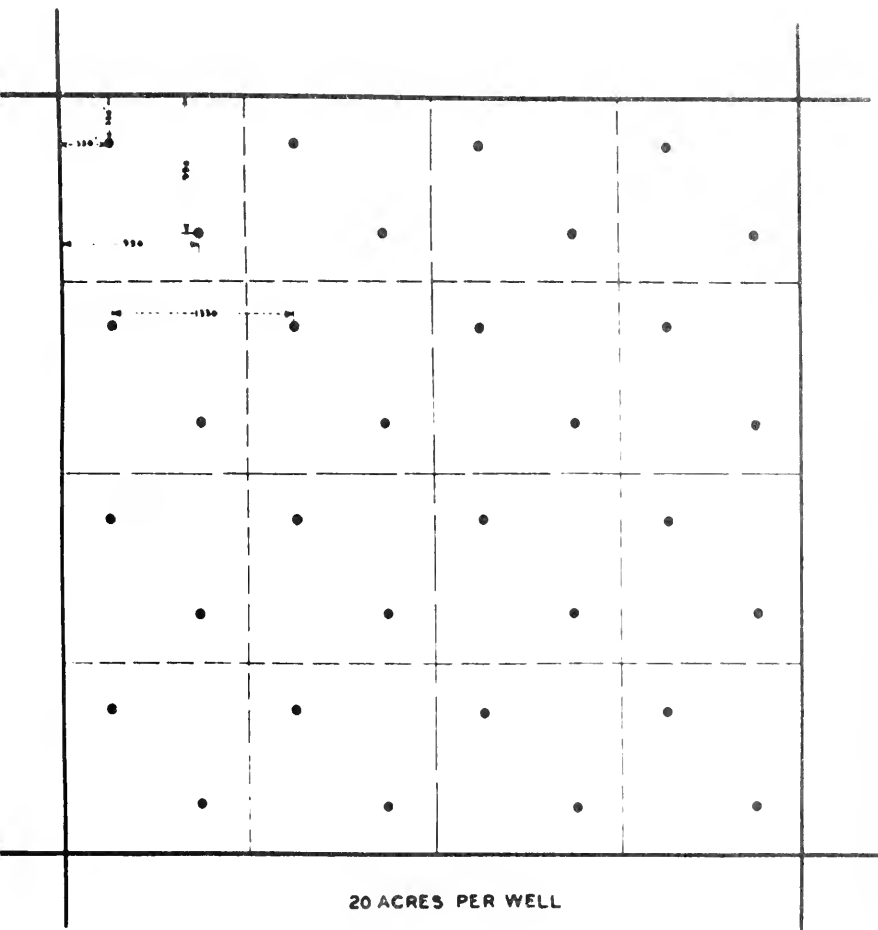
LOUIS H. BROWNSTONE

Secretary,

Section Seven Corp.

[Endorsed]: Filed Sep. 17, 1942.

EXHIBIT A



HONOLULU OIL CORPORATION

IDEAL SECTION SHOWING
**WELL SPACING
 PROGRAM**
 GUIJARRAL HILLS UNIT AREA

DESIGNED BY CDB
 CHECKED BY CDB
 DRAWN BY CDB
 REV. BY

DATE: Jan. 28, 1950
 APPR. BY
 B-253

Exhibit A—(Continued)

Whereupon counsel for plaintiff offered in evidence, a copy of all of the minutes of the corporation covering the fiscal period for which the tax in question was imposed and without objection, said minutes were received in evidence and marked plaintiff's exhibit #2.

PLAINTIFF'S EXHIBIT No. 2

SECTION SEVEN CORP.

(Minutes)

Pursuant to notice duly given, a meeting of the Board of directors of Section Seven Corp. a California corporation, was held at the office of the corporation in San Francisco, California, on Monday, October 10, 1938, at the hour of 11 o'clock A. M. of said day.

Present all the directors.

The president reported that Petroleum Securities Company a successor partial lessee of Seaboard Oil Company of Delaware under lease dated June 3, 1938, had requested, the written consent of this corporation to the assignment by the said Petroleum Securities Company, in voluntary dissolution, of its right, title and interest in the said lease unto:

Carrie Estalle Doheny, a widow, as to an undivided 33,434/1,000,000ths. interest;

Lucy Smith Battson, a married woman, as to an undivided 166,167/1,000,000ths. interest;

The heirs or devisees of E. L. Doheny, de-

Exhibit A—(Continued)

ceased, subject to the administration of his estate, as to an undivided 166,573/1,000,000ths. interest;

The heirs or devisees of Edward Laurence Doheny, Jr., deceased, subject to the administration of his estate, as to an undivided 166,666/1,000,000ths. interest;

Lucy Smith Battson (formerly Lucy Smith Doheny) as trustee under that certain Declaration of Trust made by Edward Laurence Doheny and Carrie Estelle Doheny, and dated July 20, 1926, as to the undivided 166,666/1,000,000ths. interest.

upon condition that Carrie Estelle Doheny and Lucy Smith Battson, in their individual capacity, assume the obligations, of Petroleum Securities Company under said lease of June 3, 1938 and that Petroleum Securities Company further requested the written consent by this corporation to the assignment, if made by said assignees of Petroleum Securities Company, to a corporation organized under the laws of the State of California, with a paid-in Capital stock of \$1,000,000.00 or more, upon condition that such corporation, if formed, assume the obligations under the said lease assumed by the said Carrie Estelle Doheny and Lucy Smith Battson.

Thereupon on motion duly made and seconded, it was unanimously

Resolved, that the President and secretary of this corporation, be and they are hereby author-

Exhibit A—(Continued)

ized for and on behalf of this corporation, to execute the written consent of this corporation to the assignment hereinabove referred to, a copy of which said assignment is attached to these minutes and marked Exhibit A; and the president and secretary were further authorized to do and perform all acts necessary or proper to effectuate the consent of this corporation to the matters and things hereinbefore referred to.

There being no further business before the meeting, the same on motion duly made and seconded adjourned.

LOUIS H. BROWNSTONE

Secretary.

Approved

LOUIS E. GOODMAN

President.

Pursuant to notice duly given, a meeting of the Board of Directors of Section Seven Corp., a California corporation, was held at the office of the corporation, in San Francisco, California, on Tuesday, October 25, 1938, at the hour of 9:30 o'clock A. M. of said day.

Present all the directors.

It appearing that sufficient funds were on hand for that purpose, on motion duly made and seconded, it was unanimously

Resolved that a dividend of \$16.00 per share be

Exhibit A—(Continued)

forthwith paid to stockholders of this corporation of record as of the close of business on October 25, 1938.

There being no further business before the meeting, the same on motion duly made and seconded, adjourned.

LOUIS H. BROWNSTONE

Secretary

Approved

LOUIS E. GOODMAN

President.

Pursuant to notice duly given, a meeting of the Board of Directors of Section Seven Corp., a California corporation, was held at the office of the corporation, in San Francisco, California, on Monday, December 12, 1938, at the hour of 10 o'clock A. M. of said day.

Present all the directors.

The minutes of the previous meeting of the board of directors, were read and approved as read.

On motion duly made and seconded, it was unanimously

Resolved: That the American Trust Company be and it is hereby selected as a depositary for the funds of this corporation; that said funds shall be withdrawn from said depositary on the check of this Corporation signed by any two of the following officers of this corporation.

The President, any Vice President and the Sec-

Exhibit A—(Continued)

retary, the Treasurer, any Assistant Secretary, any assistant treasurer, and that any two of said officers are authorized to endorse and deliver to the depository for and in behalf of this corporation checks, drafts, bills of exchange, and other evidence of indebtedness, negotiable or non-negotiable;

Further Resolved: That said authority hereby conferred shall remain in force until written notice of the revocation thereof by the Board of Directors of this Corporation shall have been received by said depository, and that the certification of the President or any Vice President and the Secretary of this Corporation as to the election and appointment of the officers so authorized shall be binding upon this corporation.

There being no further business before the meeting, the same on motion duly made and seconded adjourned.

LOUIS H. BROWNSTONE,

Secy.

Approved

LOUIS E. GOODMAN

Pres.

Pursuant to notice duly given, a meeting of the Board of Directors of Section Seven Corp., a California corporation, was held at the office of the corporation, in San Francisco, California, on Monday, January 30, 1939, at the hour of 2 o'clock P. M. of said day.

Present all the directors.

Exhibit A—(Continued)

Mr. Goodman, the president, presided, and Mr. Brownstone, the secretary, acted as secretary of the meeting.

Directors Anixter and Ellis presented their resignations as directors, to the meeting, and on motion duly made and seconded, said resignations were duly accepted, and Harry E. Fisher and Louis Dessauer were elected directors to fill the vacancies caused by the resignations of Directors Anixter and Ellis, and being present, took their seats as directors.

On motion of director Nathan seconded by Director Dessauer the following resolution was unanimously adopted:

Resolved: That the president of this corporation be and he is hereby authorized and directed to file an application with the Corporation Commissioner of the State of California, requesting the elimination of condition A from the permit issued to this corporation by the said Corporation Commissioner, under date of April 14, 1938, which said condition A requires the issued shares of this corporation to be deposited in escrow, and for such other and further relief as may be meet and proper.

On motion of Director Nathan, seconded by Director Fisher, it was,

Resolved: That the regular meeting of the Board of Directors be held on the last Tuesday of each month, at 2:30 o'clock P. M. without further notice or call.

The president reported that the president and

Exhibit A—(Continued)

secretary, at the request of the corporation's lessee, execute certain rights of way agreement for oil pipe lines, water pipe lines and telephone lines and roads over the corporation's property in Fresno County, California, and on motion duly made and seconded, all actions of the president and secretary in that regard were ratified, approved and confirmed.

The president presented a bill of Goodman and Brownstone for services rendered from July 1, 1938 to December 31, 1938 in the sum of \$1,000.00, and on motion duly made and seconded, said bill was approved and ordered paid.

There being no further business before the meeting the same on motion duly made and seconded, adjourned.

LOUIS H. BROWNSTONE

Secretary

Approved

LOUIS E. GOODMAN

President.

Pursuant to notice duly given, a meeting of the Board of Directors of Section Seven Corp., a California corporation, was held at the office of the corporation, in San Francisco, California, on Tuesday, February 28, 1939, at the hour of 2:30 o'clock P. M. of said day.

Present: Directors Nathan, Goodman, Brownstone, and Dessauer; Absent, Director Fisher.

Mr. Goodman, the president, presided, and Mr. Brownstone, the Secretary, acted as secretary.

Exhibit A—(Continued)

On motion duly made and seconded, it was,

Resolved, that a dividend of \$6.00 per share be forthwith paid to the stockholders of this corporation of record as of the close of business on February 28, 1939, payable out of earned surplus to the extent thereof available and as to any balance out of depletion reserve.

It is further Resolved, that the officers of the corporation be and they are hereby authorized, without further action on the part of the Board of Directors, to pay monthly in the same manner such dividend as is proper, after making provision for the setting up of necessary and proper reserves.

There being no further business before the meeting, the same on motion duly made and seconded, adjourned.

LOUIS H. BROWNSTONE,

Secretary.

Approved

LOUIS E. GOODMAN

President.

[Endorsed]: Filed Jan. 15, 1942.

Whereupon counsel for plaintiff offered in evidence a copy of the profit and loss account and a statement of receipts and [17] disbursements of the corporation during the fiscal period in question, and without objection said document was received in evidence as plaintiff's exhibit #3.

Exhibit A—(Continued)

PLAINTIFF'S EXHIBIT No. 3

SECTION SEVEN CORP.
PROFIT AND LOSS ACCOUNT

Year ended June 30, 1939

Income

Royalties—oil	\$29,409.29
Royalties—gas	22.35

Total Income	\$29,431.64
--------------------	-------------

Expenses

Accountant's fee	460.75
Attorneys' fees	1,372.50
Miscellaneous office expense.....	25.08
Stationery and office supplies.....	12.62

Taxes

California franchise	\$ 6,163.47
Federal capital stock.....	2,000.00
Fresno County land.....	34.91
	8,198.38

Telephone and telegraph.....	23.03
------------------------------	-------

Total expenses	10,092.36
----------------------	-----------

Net Profit—before depletion.....	\$19,339.28
----------------------------------	-------------

Depletion allowance	8,093.70
---------------------------	----------

Net Profit to Surplus.....	\$11,245.58
----------------------------	-------------

ANALYSIS OF EARNED SURPLUS

Balance July 1, 1938.....	\$24,489.02
---------------------------	-------------

Add: Net profit for year ended June 30, 1939.....	11,245.58
---	-----------

	\$35,734.60
--	-------------

Deduct: Federal income tax (Corporate taxable fiscal year ended Oc- tober 31, 1938).....	\$14,752.31
--	-------------

Dividends paid	18,883.07
----------------------	-----------

	32,635.38
--	-----------

Balance June 30, 1939.....	\$ 3,099.22
----------------------------	-------------

Exhibit A—(Continued)

Purchases—None

Orders—None

Commitments—None

Sales—oil and gas above

Agreements—Rights of way executed in order to avoid condemnation proceedings, as shown in the attached minutes.

As shown by the minutes of the meeting held on Oct. 10, 1939, the corporation consented to the assignment by Petroleum Securities Company, in voluntary dissolution, of its right, title and interest in and to the oil lease covering the property owned by the corporation to the stockholders of Petroleum Securities Company.

The foregoing consent was executed by the corporation at the request of Petroleum Securities Company, one of the lessees, solely for their convenience.

Contracts: None.

Acquisition of property for stock: None

SECTION SEVEN CORP.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

July 1, 1938 to June 30, 1939.

Receipts:

Royalties on oil and gas.....	\$22,994.63
Rights of way.....	81.58
Donated Capital surplus.....	352.71
Collection of advance to stockholder.....	30.30
	<hr/>
Total Receipts	\$23,459.22
Balance Cash July 1, 1938.....	28,190.84
	<hr/>
	\$51,650.06

Disbursements

Dividends paid	21,200.00
Federal income tax.....	6,876.16
Federal capital stock tax.....	1,000.00
State franchise tax.....	6,163.47
Taxes on real estate.....	34.91
Accountant's fees	460.75
Attorneys' fees	1,372.50
Attorneys' fees—cost of clearing title.....	515.92

Exhibit A—(Continued)

Advance to stockholder.....	30.30
Miscellaneous office expense.....	25.08
Stationery	12.62
Telephone	23.03
	<hr/>
	\$37,714.74
Balance cash June 30, 1939.....	13,935.32
	<hr/>
	<u>\$51,650.06</u>

SECTION SEVEN CORP.
COMPARATIVE BALANCE SHEET

	Balance Sheet July 1 1938	Balance Sheet June 30 1939	Increase of Decrease
Assets			
Cash in Bank.....	28,190.84	13,935.32	14,255.52
Accounts Receivable	—		
accrued royalties		6,437.01	6,437.01
†Land	102,791.88	103,226.22	434.34
Lease Costs	33,898.35	33,898.35	—
Organization	83.95	83.95	—
	<hr/>	<hr/>	<hr/>
	164,965.02	157,580.85	7,384.17
	<hr/>	<hr/>	<hr/>

EXPLANATION OF CHANGES

†Attorneys' fees—to clear title—increase.....	\$515.92
<i>Less:</i> Rights of way granted—decrease.....	81.58
	<hr/>
Net Increase	<u>\$434.34</u>

Liabilities and Capital			
Reserve for Federal Income tax	—	6,876.15	6,876.15
Reserve for Federal Capital Stock tax		1,000.00	1,000.00
*Reserve for Depletion (Fed- eral percentage allowance)	39,776.00	45,552.77	5,776.66
Capital			
Capital stock	100,700.00	100,700.00	—

Exhibit A—(Continued)

	Balance Sheet July 1 1938	Balance Sheet June 30 1939	Increase of Decrease
Surplus			
Donated	24,489.02	3,099.22	21,389.80
	<hr/>	<hr/>	<hr/>
	164,965.02	157,580.85	7,384.17
	<hr/>	<hr/>	<hr/>
*Depletion allowance for year July 1, 1938 to June 30, 1939—increase			\$8,093.70
Less: Dividends paid from percentage depletion.....			2,316.93
			<hr/>
Net Increase			\$5,776.77

See profit and loss account and analysis of surplus.

[Endorsed]: Filed Jan. 15, 1942.

Aside from the collection of royalties under the lease and the disbursal of these royalties by way of dividends to the stockholders, the only other corporate acts of any kind performed by the corporation during this period of years, were the execution of a number of rights-of-way to the County of Fresno, various other oil companies and the Pacific Gas & Electric Co. These rights-of-way were executed in accordance with the custom of oil companies to execute reciprocal rights-of-way to permit the development of an entire field without hindrance or delay of any kind and were not executed in return for any substantial consideration. They were executed at the request of the lessee to facilitate the development of the property and also to avoid the necessity of any condemnation proceeding being brought to acquire rights-of-way. The royalties which the corporation received during

Exhibit A—(Continued)

the fiscal year in question under the terms of the lease were all cash payments made by the lessee to the corporation. This was true during the entire period of the life of the corporation, as well as during the fiscal year in question.

Cross Examination

By Esther B. Phillips,

Assistant United States Attorney

Under the lease, plaintiff's exhibit #1, the lessor has an option to receive oil in kind, which can be exercised only once each year. The document speaks for itself. The option to take oil in kind has never been exercised by Section Seven Corp. There was no occasion for a formal notice to the lessee [18] whether or not the option would be exercised or would not be exercised, unless the option was exercised. In the absence of notice, the lessee is bound to pay only in cash. The lessee forwards the corporation a statement of royalties, plus a check for the previous month's royalty on the 20th day of the succeeding month. The royalty statement shows the amount of the production of oil and gas, the amount of the sales of oil and gas and the amount of royalties. If we desire, we have the opportunity to make a check or examination of the actual production records. At no time during the meetings of the Board of Directors, or at any meeting of the officers was there ever any discussion on whether we would accept royalties in cash or in kind. The ques-

Exhibit A—(Continued)

tion of voting to accept royalties in cash never arose. We have never done anything except receive the cash. During this period we executed five separate rights-of-way, and on one occasion the Standard Oil Company paid us \$81.00 in return for the execution of the right-of-way. The right-of-way would have been executed anyway; they offered us this sum as a consideration and we did not refuse it. The \$81.00, I believe, was for one right-of-way. A right-of-way would be requested from either our lessee or ourselves. If the lessee wanted us to execute the right-of-way, we executed it. The papers would ordinarily be prepared by the person who desired the right-of-way and forwarded to us with a request for execution. We submitted it to the lessee and if the lessee approved it in writing we executed it. This is a reciprocal arrangement among the people in the oil business and a practice in the industry. It is to everybody's interest to be liberal about giving rights-of-way.

The formation of the corporation in the fall of 1937 was [19] handled as follows:

In 1937 we knew that we would be in a position to execute a lease of the property. When we acquired that knowledge we formed Section Seven Corp. and took deeds to the property from the various individuals, the individual owners. We executed a lease on one-half of the property and although the title was not yet clear the oil companies accepted that. Then in the midst of the partition suit, the

Exhibit A—(Continued)

stock was issued and while we were in the middle of the partition suit the lease was reformed. It developed that the owners of five-sixths of the interests in this property were willing to go into the corporation and execute the lease, so as a result of the partition suit the corporation acquired a five-sixths interest in the property, the Superior Oil Company acquired a one-sixth interest and the property was partitioned in kind, and as part of that partition in kind we executed a new lease dated June 3rd., which covered the entire remaining five-sixths interest in the property. The private owners of the land, in effect, sold their land to the corporation and received payment in stock. The corporation was formed solely for the purpose of making this lease. Prior to the formation of the corporation, it was known that the lease would be executed. The corporation was never formed for the purpose of carrying on or engaging in any business other than the execution of this lease and thereafter the receipt of royalties from the land itself. It was formed to receive the benefits and advantages of the lease.

Whereupon counsel for defendant offered in evidence the original stock tax assessment and without objection the said assessment was received in evidence and marked defendant's [20] exhibit A.

Exhibit A—(Continued)

DEFENDANT'S EXHIBIT A

UNITED STATES OF AMERICA

Treasury Department

Washington

December 3, 1940.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Return of Capital-Stock Tax for year ended June 30, 1939, executed August 22, 1939, filed by Section Seven Corporation, San Francisco, California, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[Seal]

S. H. MARKS

Act. Chief Clerk,

Treasury Department

By S S F J P W H

M W W W B W M F

[Endorsed]: Filed Jan. 15, 1942.

768-914

1939 RETURN

OF

CAPITAL-STOCK TAX

For Year Ending June 30, 1939

DOMESTIC CORPORATIONS

(Chapter 6, Internal Revenue Code, as amended)

This return must be filed, in triplicate, and received with remittance by the Collector for your district on or before the due date. (See instruction 20, page 10.)

Form 707
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1ST CALIF

(Collection district)

SEPT 1939

(Month) (Year)

4382 0

(Page) (Line)

To be stamped above by Collector, showing district and date received

1. Name Section Seven Corp.
2. Address 615 Russ bldg., San Francisco California
(The address must be that of the principal place of business. Give "street and number," "city or town," and "state.")
3. Incorporated or organized in State of California Month November Day 19 Year 1937
4. Was a 1938 capital-stock tax return filed? yes Name under which filed. (If different, attach statement explaining fully.) same (District 1st Calif)
5. Date of close of last income-tax year ended prior to July 1, 1939 October 31, 1938 Was an income-tax return filed for that year? yes Name under which filed same (District 1st Calif)
If the corporation is newly organized and has not established an income-tax year, state date of organization
6. Nature of business in detail Land investment
7. Name of parent company, if any none (District none)
8. Name of subsidiary, if any none No. shares held none (District none)
(If more than one, attach list and state number of shares held by parent, also districts where filed)

DECLARED VALUE OF CAPITAL STOCK

Corporations enumerated in instruction 10 on page 10 must report a definite and unqualified declared value in this block. (See also instructions 11 to 13.) (Do not use this block for elective declaration year—see block 10 below.)

ADJUSTED VALUE—ELECTIVE DECLARED VALUE

Corporations described in instruction 9 on page 9 MUST complete Schedules I and II and enter the adjusted value last item in Schedule I in Part A of this block. Any corporation in this class may elect to declare and pay tax on a value in excess of the adjusted value. If such election made, a definite and unqualified value MUST be entered in Part B of this block. (See instructions 14 and 15.)

PART A
ADJUSTED VALUE
OF CAPITAL STOCK
(Last item of Schedule I,
page 2)

\$1,051,939.67

PART B
ELECTIVE DECLARED
VALUE OF
CAPITAL STOCK
(Tax amount declared below must
be in excess of adjusted value
disclosed by Schedule I)

- EXEMPTIONS.—The law provides for exemption from the tax only on the grounds indicated below. Corporations claiming exemption must (1) complete block 9 of 10 above, whichever is applicable, (2) check the appropriate block below, and (3) submit with the return the evidence specified under the block checked.

- ☐ Corporation exempt from income tax under section 101, Internal Revenue Code. Furnish information required by instruction 17.
☐ Insurance company subject to tax under section 101, 201, 207, Internal Revenue Code. State which section
☒ Corporation not doing business. Furnish information required by instruction 19.

Corporation or filer	FOR USE OF TAXPAYER	FOR USE OF DEPARTMENT
2. Taxable value reported in item 4 of 10. <u>77140</u>	1 051 939 67	
3. Tax at rate of \$1 for each full \$1,000 in item 12 (omit cents)	1 051 XXXX	XXXX
4. Penalty of _____ percent for delinquency in filing return.		
5. Interest at 6 percent per annum.		
6. Total tax, penalty, and interest <u>55</u>	1 051 00	

We, the undersigned Louis E. Brownstone (Name of president, vice president, or other principal officer) Pres. (Title)
and Louis H. Brownstone (Name of treasurer, assistant treasurer, or chief accounting officer) (Title), of the corporation for which this

return is made, being severally duly sworn, each for himself deposes and says that this return, including any accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to Chapter 6, Internal Revenue Code, and Regulations 64 (1938 edition).

Sworn to and subscribed before me this 22 day of August, 1939
Louis E. Brownstone (Signature of officer administering oath) (Official capacity)
Louis H. Brownstone (Signature) (Title)
NOTARIAL SEAL CORPORATE SEAL

The schedules on this page must be completed by every corporation which established a declared value in its capital stock tax return for the year ended June 30, 1938, even though, under section 1202 (a) of the Code, as amended, the corporation elects to make a new declared value. See instructions 5 to 9, inclusive, 14, and 15.

SCHEDULE I. STATUTORY ADJUSTMENTS FOR TRANSACTIONS DURING INCOME-TAX YEAR ENDED

DECEMBER 31, 1938, OR INCOME-TAX FISCAL YEAR ENDED October 31, 1938

Declared value established by the return for the taxable year ended June 30, 1938, \$ 1,000,000.00

Additions:

- A. (1) Total cash paid in for stock or shares (see instruction 7, item A) \$
- (2) Fair market value of all property paid in for stock or shares (see instruction 7, item A)

B. Paid-in surplus and contributions to capital (see instruction 7, item B)

C. Net income (if net loss, enter as item 3) (see instruction 7, item C) 99,415.38

D. Income wholly exempt from Federal income tax (see instruction 7, item D)

E. Excess, if any, of deduction for depletion over the amount which would be allowable if computed without regard to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4) of the 1936 or 1938 Act (see instruction 7, item E) 40,504.29

Total additions

139,919.67

TOTAL BEFORE DEDUCTIONS

1,139,919.67

Deductions:

1. (a) Total cash distributed to shareholders (see instruction 7, item 1) \$ 87,980.00

(b) Fair market value of all property distributed to shareholders (see instruction 7, item 1)

2. Amount disallowed as deduction by section 24 (a) (5) of 1936 or 1938 Act (see instruction 7, item 2)

3. Excess of deductions allowable over gross income and claimed on income-tax return (see instruction 7, item 3)

Total deductions

87,980.00

ADJUSTED VALUE (enter in Part A of block 10, page 1)

\$ 1,051,939.67

SCHEDULE II. ANALYSIS OF CHANGES IN CAPITAL STOCK AND SURPLUS

(See instruction 8, page 13)

Capital Stock and Surplus at beginning of year

1. Capital stock: Preferred
Common 100,700.00
2. Capital or paid-in surplus
3. Surplus reserves
4. Surplus and undivided profit

Additions—Capital transactions

5. Total cash and fair market value of property paid in for stock or shares (total of items A(1) and A(2), Schedule I)
6. Paid-in surplus and contributions to capital (item B, Schedule I)
7. Other additions (to be detailed)

Additions—Revenue transactions

8. Net income (item C, Schedule I) 99,415.38
9. Income wholly exempt from income tax (item D, Schedule I)
10. Excess of deduction for depletion (same as item E, Schedule I)
11. Other additions (to be detailed) * 40,504.29

TOTAL \$ 240,619.67

Deductions—Capital transactions

12. Distributions to shareholders (items 1 (a) and (b), Schedule I):
(a) Earnings or profit \$ 85,063.07
(b) Liquidating
- (c) ~~Other~~ % Depletion * 2,316.93
13. Enter class and amount of distributions in corporation's own stock
14. Other deductions (to be detailed)

Deductions—Revenue transactions

15. Excess of deductions allowable over gross income and claimed on income-tax return (item 3, Schedule I)
16. Deductions disallowed by sec. 21 (a) (5), 1936 or 1938 Act (item 2, Schedule I)
17. Other deductions (to be detailed)

1937 Federal income tax 13,752.31

Capital Stock and Surplus at end of year

18. Capital stock: Preferred
Common 100,700.00
19. Capital or paid-in surplus
20. Surplus reserves Depletion adj 38,187.36
21. Surplus and undivided profits

TOTAL \$ 240,619.67

*Enter values shown by the books and, if different from values entered in Schedule I, explain difference.

2-17900

Exhibit A—(Continued)

Whereupon plaintiff and defendant rested and the hearing concluded.

The foregoing evidence, together with the exhibits mentioned, constitutes all of the evidence material to the issues raised in this review and is to be included in the record on review to be certified in this proceeding. There are to be attached hereto and made a part hereof, on transmission of the record from the Clerk of the District Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, all of the exhibits offered by plaintiff and defendant and admitted in evidence, and hereinbefore referred to.

Dated: July 17, 1942.

LOUIS E. GOODMAN

LOUIS H. BROWNSTONE

Attorneys for Plaintiff

The foregoing statement of evidence is approved by the undersigned, as attorney for defendant.

Dated: July 17, 1942.

FRANK J. HENNESSY

Attorney for Defendant.

[Endorsed]: Filed Jul. 18, 1942. [21]

[Title of District Court and Cause.]

ORDER

Good cause appearing therefor, it is hereby

Ordered that the original exhibits heretofore introduced at the trial of this action be sent to the Circuit Court of Appeals in lieu of copies thereof, as part of the record on appeal in this action, to be returned to this Court upon the final disposition of this cause on appeal.

Dated: July 20th, 1942.

MICHAEL J. ROCHE

Judge

[Endorsed]: Filed Jul. 20, 1942. [22]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL AND DOCKET ACTION

Good Cause appearing therefor, it is hereby

Ordered that the time within which the record on appeal may be filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, and the action docketed in the Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to, to and including September 27, 1942.

Dated: August 26th, 1942.

A. F. ST. SURE

Judge

[Endorsed]: Filed Aug. 26, 1942. [23]

[Title of District Court and Cause.]

SECTION SEVEN CORP., a corporation,

vs.

CLIFFORD C. ANGLIM, Collector of Internal
Revenue for the First District of California
DOCKET ENTRIES

Docket No. 21651-W

1940

- Sept. 23—1. Filed complaint, issued summons.
24—2. Filed summons ex returned 9-23.
Nov. 19—3. Filed ord. ex def't's. time to file an-
swer.
Dec. 6—4. Filed answer of def't.
10—5. Filed notice of motion to set for trial.

1941

- Jan. 6— Ord. mo. to set for trial dropped from
calendar.
June 2— Ord. set for trial Dec. 4, 1941.
Dec. 4— Ord. trial con. to Jan. 6, 1942.

1942

- Jan. 6— Ord. case to trial on trial calendar, etc.
7— Ord. con. to Jan. 9 for trial
9— Ord. case to trial on trial calendar, etc.
12— Ord. case to trial on trial calendar, etc.
13— Ord. reset for trial Jan. 15
15— Trial before the Court, Norcross, J.,
evid. intro., briefed in 10-10-5 days.
21— Filed 1 Vol. of Reporter's Transcript.
22—6. Filed pl'tff's opening memo.
Feb. 4—7. Filed def't's. brief.

1942

- Feb. 10—8. Filed plttf's reply memo.
26— Ord. case submitted to Judge Norcross
Mailed notice.
28— Ord. case dismissed and judgt. enter
in favor of deft. and for costs.
Mailed notice.
9. Filed decision.
Mar. 6— Lodged findgs.
Apr. 27—10. Filed findgs.
11. Filed judgt. in favor of deft. with
costs. Mailed no. Made Judgt. Roll.
12. Filed memo. of costs and disburse-
ments.
July 18—13. Filed no. of appeal. Mailed no.
14. Filed cost bond on appeal.
15. Filed stip. re. contents of record on
appeal.
20—16. Filed ord. allowing exhibits to be
transmitted to CCA.
Aug. 26—17. Filed order ex. time docket appeal.

[24]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court
of the United States, for the Northern District of
California, do hereby certify that the foregoing 24

pages, numbered from 1 to 24, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Section Seven Corp., a Corp., vs. Clifford C. Anglim, Collector of Internal Revenue for the First District of California No. 21651-W, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Three dollars and thirty-five cents (\$3.35) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 15th day of September, A. D. 1942.

[Seal]

WALTER B. MALING,

Clerk

WM. J. CROSBY

Deputy Clerk [25]

[Endorsed]: No. 10253. United States Circuit Court of Appeals for the Ninth Circuit. Section Seven Corp., a corporation, Appellant, vs. Clifford C. Anglim, Collector of Internal Revenue for the First District of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed September 17, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10253

SECTION SEVEN CORP., a corporation,
Plaintiff and Appellant

vs.

CLIFFORD C. ANGLIM, etc.,
Defendant and Respondent.

STATEMENT OF POINTS

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

The following are the points upon which appellant intends to rely on this appeal.

I.

The District Court erred in holding and deciding that appellant was carrying on or doing business during the capital stock tax year ending June 30, 1939.

II.

The District Court erred in holding and deciding that appellant was subject to the payment of the declared value capital stock tax imposed by Section 1200 of the Internal Revenue Code of 1939 as amended for the year commencing July 1, 1938 and ending June 30, 1939.

III.

The District Court erred in holding and deciding that the sum of \$1,051.00, declared value capital stock tax imposed by Section 1200 of the Internal Revenue Code of 1939 for the year commencing July 1, 1938 and ending June 30, 1939, was not erroneously and illegally assessed and collected by respondent from appellant.

IV.

The Conclusions of Law and the Decision of the District Court are not supported by any substantial evidence and the decision of the District Court is not in accordance with law.

Dated: September 17th, 1942.

LOUIS E. GOODMAN

LOUIS H. BROWNSTONE

Attorneys for Appellant.

[Endorsed]: Filed Sep. 18, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED ON APPEAL

Appellant hereby designates for inclusion in the printed record on appeal the entire record as filed in the above entitled Court.

Dated: September 17th, 1942.

LOUIS E. GOODMAN,
LOUIS H. BROWNSTONE
Attorneys for Appellant.

[Endorsed]: Filed Sep. 18, 1942.

No. 10,253

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit 10

SECTION SEVEN CORP.

(a corporation),

Appellant,

vs.

CLIFFORD C. ANGLIM, Collector of Internal Revenue for the First District of California,

Appellee.

APPELLANT'S OPENING BRIEF.

LOUIS E. GOODMAN,

LOUIS H. BROWNSTONE,

Russ Building, San Francisco,

Attorneys for Appellant.

FILED

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No. 10,253

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

SECTION SEVEN CORP.

(a corporation),

Appellant,

vs.

CLIFFORD C. ANGLIM, Collector of Internal Revenue for the First District of California,

Appellee.

APPELLANT'S OPENING BRIEF.

I.

JURISDICTION.

This is a proceeding to review a decision of the United States District Court for the Northern District of California Southern Division, dated April 24, 1942 and filed and entered April 27, 1942, adjudging and decreeing that appellant is not entitled to recover from appellee the sum of \$1051.00 capital stock taxes paid for the taxable year commencing July 1, 1938 and ending June 30, 1939.

Appellant filed its capital stock tax return for said year and paid said amount to appellee on August 30,

1939. On November 18, 1939, a claim for refund was filed on the ground that petitioner was not carrying on or doing business during the year and was therefore not subject to the declared value excess profits tax imposed under the provisions of Sections 1200 to 1207 of the Internal Revenue Code of 1939, as amended. The Commissioner of Internal Revenue rejected said claim on February 19, 1940 and gave written notice of such rejection, as provided by Statute. Suit was filed in the District Court against appellee for said amount on September 23, 1940. (Complaint R. 2 to 4, Answer R. 5.)

Jurisdiction of the District Court is sustained by Section 24, subdivisions 5 and 20 of the Judicial Code as amended, Title 28 U.S.C.A. Section 41.

Jurisdiction of this Court to review the decision of the District Court of Appeals is sustained by subsection a-1 of Section 128 of the Judicial Code as amended, Title 28 U.S.C.A. Section 225.

II.

STATEMENT OF THE CASE.

Appellant was incorporated November 19, 1937 under the laws of the State of California for the purpose of acquiring the interests of certain tenants-in-common in and to Section 7, Title 20 South, Range 16 East, M. D. B. & M., Fresno County, California.

In the year 1911 legal title to this property was vested in the Mercantile Trust Company by the then

owners. The trust company was to dispose of the property, which was prospective oil property, in accordance with the directions of a committee of the owners. (R. 15.)

Prior to 1937 every member of the committee had died and a majority of the owners had died. As a result, the equitable title to the property had become involved. (R. 15.)

In 1937 Seaboard Oil Company of Delaware offered to lease the property for the purpose of drilling for oil. It was necessary to clear title to the property by partition through Court action. (R. 58.)

Appellant was formed to acquire the interests of the owners as determined in the partition suit and to execute an oil lease to the Seaboard Oil Company of Delaware. Owners of an undivided five-sixths interest in the land conveyed their interests in the land to the corporation; the corporation executed an oil lease toward the end of the year 1937 covering one-half of the land and commenced the partition proceeding. As a result of the partition suit, the property was partitioned in kind and the corporation acquired five-sixths of Section 7, and one-sixth was partitioned to an owner, who did not convey his interest in the land to the corporation. (R. 58-59.)

For and in consideration of the transfer of the interests of the owners in the property to appellant, appellant issued 530 shares of its capital stock. (R. 59.)

On June 3, 1938, the lease of one-half the land previously executed was cancelled and a new oil lease was

executed by which the entire five-sixths interest in the property acquired by appellant was leased to the Seaboard Oil Company of Delaware. (R. 59.) This lease is plaintiff's exhibit No. 1. (R. 16 to 39.)

Under the provisions of said lease, appellant was entitled to receive a royalty on all oil produced equal to one-sixth of its value and one-sixth of the net proceeds of all gas produced and sold. The lease gave lessor the option to receive the oil royalty in oil delivered in tanks on the leased premises provided sixty days' notice of the exercise of the option was given and provided further that the option could be exercised only once in any one year. (Section 1 of Exhibit A.—R. 19; Finding II, R. 9.) In the absence of the exercise of this option, the royalty was payable in cash.

Drilling was done pursuant to the terms of this lease; oil was found in September 1938, and appellant received the first royalty in October 1938. Oil continued to be produced and by June 30, 1939, appellant had received oil royalties of \$29,409.29 and gas royalties of \$22.35. (R. 54, Finding III, R. 10.)

Appellant received no other income, save a nominal sum for rights-of-way granted pursuant to a custom of the oil industry and in order to avoid condemnation proceedings. (Finding III—R. 10; R. 56, R. 58.)

Although appellant had an option to receive oil in kind, this option was never exercised. At no time during the meetings of the Board of Directors was there ever any discussion respecting the exercise of the option to take royalties in kind. The question never arose and nothing has been done by the corporation

except to receive the cash royalty. (R. 57-58.) The royalties received were distributed in the form of dividends to the shareholders and no further or other corporate activity other than as outlined above was engaged in. (R. 56—Finding V—R. 10.) The corporate activity of appellant was exercised through its officers and Board of Directors. It had no regular employees and its expenditures consisted of miscellaneous expenses for telephone, office supplies, taxes, and fees of accountants and attorneys. (Finding V, R. 10.)

The corporation was formed solely for the purpose of acquiring title to the property, executing an oil lease and thereafter receiving royalties and distributing these royalties in the form of dividends to the shareholders of the corporation. (R. 59.)

Appellant filed its capital stock tax return for the taxable year commencing July 1, 1938 and ending June 30, 1939, and paid a tax of \$1051.00 to appellee on August 30, 1939. A claim for refund was filed on the ground that appellant was not carrying on or doing business during the taxable year, and denied by the Commissioner of Internal Revenue, and thereafter suit was brought for the recovery of the amount of the tax. (Finding IV, R. 10.)

The sole ground upon which the District Court held that appellant was carrying on or doing business during the taxable year in question was that under the terms of the lease with the Seaboard Oil Company of Delaware, plaintiff's Exhibit No. 1, appellant had an unexercised right, once in any calendar year, to demand an oil royalty in kind rather than in cash. (R. 10-11.)

III.

STATEMENT OF ERRORS RELIED UPON.

The District Court erred in:

1. Holding and deciding that appellant was carrying on or doing business during the tax year ending June 30, 1939.

2. Holding and deciding that appellant was subject to the payment of the declared value capital stock tax imposed by Section 1200 of the Internal Revenue Code of 1939 as amended for the year commencing July 1, 1938, and ending June 30, 1939.

3. Holding and deciding that the sum of \$1051.00 declared value capital stock tax imposed by Section 1200 of the Internal Revenue Code of 1939 for the year commencing July 1, 1938 and ending June 30, 1939, was not erroneously and illegally assessed and collected by respondent from appellant.

4. That the Conclusions of Law and the Decision of the District Court are not supported by any substantial evidence and the decision of the District Court is not in accordance with law.

IV.

ARGUMENT.

THE DECISION OF THE DISTRICT COURT.

The District Court held that the failure of appellant to exercise a right to demand deliveries of royalties in kind rather than in cash involved an affirmative act constituting the doing of business within the meaning

of the decisions of this Court in *Kettleman Hills Royalty Syndicate v. Commissioner*, 116 Fed. (2d) 382 and *U. S. v. Trust No. B-I*, 107 Fed. (2d) 22.

These cases hold that the existence of such a right, under the decision of the U. S. Supreme Court in the case of *Morrissey v. Commissioner*, 296 U. S. 344, 80 L. Ed. 263, conferred upon the trust in question the *power* to exercise a business judgment. These trusts were therefore held to be associations corporate in character, taxable under the provisions of the Revenue Laws defining taxable associations.

These cases, decided under a different statute under which the *power* to do business, rather than the *doing* of business, is the criterion of taxability, were held to govern the case at bar.

V.

SUMMARY OF ARGUMENT.

Appellant was not engaged in the carrying on or doing of business during the taxable year ending June 30, 1939 by reason of the fact that it had a right to demand delivery of royalty in kind. Although the right to exercise such a choice confers a power to act, the failure to exercise the granted option does not involve action. The capital stock tax imposed upon corporations which carry on or do business is not imposed upon appellant by reason of such failure to act.

VI.

ARGUMENT.

The question for decision is whether or not, Section Seven Corp., appellant herein, is subject to the payment of the declared value capital stock taxes imposed by Section 1200 of the Internal Revenue Code of 1939, as amended, for the year commencing July 1, 1938 and ending June 30, 1939.

Section 1200, subdivision a, reads as follows:

“For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.”

The tax is imposed if a corporation actually carries on or does business during any part of the taxable year. *The doing of business* and *not* the *power* of the corporation to do business is the controlling factor. Whether or not plaintiff is subject to the tax imposed, depends upon whether or not it actually carried on or did business during any part of the taxable year hereinbefore referred to.

The Commissioner of Internal Revenue in his regulations 64, Article 43, in force for the taxable year in question, specifies that a corporation shall not be held to be doing business under the capital stock tax act in a case in which its activities are limited to: “2. The disposition of the avails of property and the doing only of such acts as may be necessary for the mainte-

nance of its corporate status in a case in which the corporation either was organized for or has reduced its activities to the mere ownership and holding of specific property.”

The first income tax levied upon corporations was imposed upon the *carrying on or doing of business* and the question was early presented as to whether or not the receipt of rent or royalty from property and the distribution of such rent or royalty to stockholders constituted the actual carrying on or doing of business. A number of Supreme Court decisions establish that such activities do not constitute the doing or carrying on of business.

In *McCoach v. Minehill Ry.*, 228 U.S. 295, 57 L. Ed. 842, a railroad company had leased all of its property at an annual rental and was collecting the rental and distributing it. The corporation kept and maintained its offices and paid the usual and ordinary expenses incident thereto. In holding that the acts of the corporation did not constitute the doing of business under the Federal Corporate Tax Act imposed upon the actual carrying on of business, the Court spoke as follows:

“The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business; in which event the investment income may be added to the business income in order to arrive at the measure of the tax; and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the in-

vestments, collecting the income, and dividing it among its stockholders. In the former case the tax is payable; in the latter not."

In *U. S. v. Emery Co.*, 59 L. Ed. 825, 237 U.S. 28, a corporation was engaged in the collection of rent from a single lease and the distribution of this rental to its shareholders. In holding that the corporation was not engaged in or doing business, the Court stated:

"The claimants' characteristic charter function, and the only one that it was carrying on, was the bare receipt and distribution to its stockholders of rent from a specified parcel of land. Unless its bare existence as an intermediary was doing business, it is hard to imagine how it could be less engaged.

"Judgment affirmed."

In *Von Baumbach v. Sargent Land Co.*, 61 L. Ed. 460, 242 U.S. 503, a corporation was formed to acquire, operate and dispose of large tracts of timber land. Although a large portion of the land of the corporation was leased, the corporation during the year disposed of certain land and stumpage, rented and leased other portions of the land and allowed portions of the land to be used for school house purposes and public park purposes. The Court held that the activities of the corporation in selling property and stumpage, and granting leases, constituted the doing of business and in so holding the Court spoke as follows:

"It is evident, from what this Court has said in dealing with the former cases, that the decision in each instance must depend upon the particular

facts before the court. The fair test to be derived from a consideration of all of them is between a corporation which has reduced its activities to the owning and holding of property and the distribution of its avails, and doing only the acts necessary to continue the status, and one which is still active and is maintaining its organization for the purpose of continued efforts in the pursuit of profit and gain, and such activities as are essential to those purposes."

The question determined by the foregoing Supreme Court cases is the same question presented in any case where it is necessary to decide, under the capital stock tax act, whether or not a corporation is doing business; and the Courts have consistently followed the same doctrine in cases arising under the capital stock tax act.

See:

U. S. Mercury Mines Co. v. Viley, 20 Fed. Supp. 734;

Rose v. Nunnally Investment Company, 22 Fed. (2d) 102.

The same question was presented to the Circuit Court for the Ninth Circuit in the case of *U. S. v. Hotchkiss Company*, 25 Fed. (2d) 958, C.C.A. 9. The Hotchkiss Company instituted an action against the United States to recover capital stock taxes paid for the year ending June 30, 1924 and for the four years immediately preceding. The corporation had been organized for the sole purpose of owning and holding 20,000 acres of timber land in Del Norte County and reselling the whole at a profit. It issued bonds and

from time to time levied and collected assessments on its capital stock. In order to avoid condemnation proceedings, it sold a strip of land to Del Norte County for highway purposes for \$5000.00. It paid its secretary a salary of \$50.00 per month, and its president, \$150.00 per month. It maintained its corporate existence, but never sold any part of its land, other than the strip of land to Del Norte County mentioned above. In holding that the corporation was not subject to the capital stock tax, the Ninth Circuit Court spoke as follows:

“The sole question presented for decision is: Was the defendant in error carrying on or doing business during the period in question, within the meaning of the Revenue Acts? If so, the judgment should be reversed; otherwise, it must be affirmed.

The mere substitution of one mortgage or one form of indebtedness for another, the levy of stock assessments to pay taxes, and interest, the maintenance of corporate existence, the sale of a right of way for a public road to avoid condemnation proceedings, and the payment of nominal salaries to the secretary and president, did not, without more, constitute carrying on or doing business, within the meaning of the law. Of course, we must judge the activities of the corporation as a whole; but if it was not carrying on or doing business because of the activities mentioned, it has done nothing else, and was not subject to the tax, unless, as contended by the government, every corporation organized for the purpose of holding property for gain or profit is doing business, regardless of its other activities.

As said by the Circuit Court of Appeals of the Second Circuit, in *Eaton v. Phoenix Securities Co.*, 22 F. (2d) 497: 'We do not think that anything will be gained by an extended discussion of * * * this tangled subject.' Suffice it to say that, under the authority of *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 31 S. Ct. 361, 55 L. Ed. 428, *McCoach v. Minehill & Schuylkill Haven R. Co.*, 228 U. S. 295, 33 S. Ct. 419, 57 L. Ed. 842, and *United States v. Emery, Bird, Thayer Realty Co.*, 237 U. S. 28, 35 S. Ct. 499, 59 L. Ed. 825, we are of opinion that the defendant in error was not carrying on or doing business during the period in question within the meaning of the law.

Von Baumbach v. Sargent Land Co., 242 U. S. 503, 37 S. Ct. 201, 61 L. Ed. 460, *Edwards v. Chile Copper Co.*, 270 U. S. 452, 46 S. Ct. 345, 70 L. Ed. 678, and *Phillips v. International Salt Co.*, 274 U. S. 718, 47 S. Ct. 589, 71 L. Ed. 1323, are not in conflict with the earlier decisions, although they rather indicate that the rule of exemption will not be extended. See, also, *Lane Timber Co. v. Hynson (C.C.A.)*, 4 F. (2d) 666, 40 A.L.R. 1448; *Cannon v. Elk Creek Lumber Co. (C.C.A.)*, 8 F. (2d) 996; *United States v. Three Forks Coal Co. (C.C.A.)*, 13 F. (2d) 631; *Rose v. Nunnally Investment Co. (C.C.A.)*, 22 F. (2d) 102.

In *Lane Timber Co. v. Hynson*, *supra*, the Court said:

'It is defendant's contention that a corporation which does what its charter authorizes it to do is liable for the corporation tax, and that the plaintiff, because it was authorized to hold title to the land, and was doing so with the expectation of selling at a profit, was engaged in business. If a

corporation is not engaged in business, it cannot make any difference that what it is doing is authorized by its charter. Owning land is not doing business, nor is paying taxes. Most owners of land, whether corporations or individuals would be willing to sell at a profit. In our opinion, the mere fact that the plaintiff selected agents who made efforts to sell its land does not render it liable.'

From 1906 to 1924 the defendant in error and its predecessor in interest owned and held this tract of timber land as their only asset. During that period they made no use of the land, added nothing to it, took nothing from it, engaged in only such narrow activities as are incident to the ownership of property and it would be going very far to say that such corporations are carrying on or doing business within the meaning of a revenue law."

See also:

Sears v. Hassett, 111 Fed. (2d) 961, C.C.A. 1.

Under the foregoing authorities, none of the activities of Section Seven Corp., including the execution by it of rights of way under the circumstances presented, constituted the carrying on or doing of business within the meaning of Section 1200 of the Revenue Act.

The cited authorities are controlling unless their application to the case at bar has been changed by the decisions of this Court in *Kettleman Hills Royalty Syndicate v. Commissioner*, 116 Fed. (2d) 382, and *U. S. v. Trust No. B-I*, 107 Fed. (2d) 22.

The Revenue Act has always defined a corporation as follows:

“The term ‘corporation’ includes associations, joint stock companies and insurance companies.”

It therefore became necessary for the Courts to define the meaning of the term “association” and the leading case adopting such a definition is *Morrissey v. Commissioner*, supra. If the type of organization adopted by associates essentially resembles the corporate form, the association is taxable as a corporation, if in addition, it has the power to carry on or do business. Whether or not business is actually carried on is immaterial, if the power to carry on business is conferred upon the organization. *Power* to act, rather than *action*, determines taxable status, in such case.

In *U. S. v. Trust No. B-I*, a corporation owning oil properties was dissolved and its assets were distributed to trustees. The trustees had the power to sell the oil produced upon the land of the corporation, to otherwise protect the trust property and to sell, lease or release the property, as in their judgment, they deemed advisable. The trustees could drill wells at the expiration of the leases, could exploit the land as owners, and could release the entire premises.

In the *Kettleman Hills* case the trust had been organized to administer royalty rights in the Kettleman Hills area. The trustee had the power to collect and receive royalties for oil and gas, to sell oil and to do any and all things necessary to develop and

protect the property of the association. The association had the option to demand deliveries of royalties in kind rather than in cash. The Court held that the right to demand delivery in kind conferred upon the association the power to do business, making it a taxable association within the definition prescribed by *Morrissey v. Commissioner*. In both the cited cases, the question for determination was the existence of a *power* to carry on or do business. The question here presented *involving capital stock taxes* is whether or not appellant *actually engaged in business*. The test is whether or not the corporation does business; not whether or not it has the power to do business. Even though it may be said that the right to exercise a choice confers a power to act, it cannot be said that the failure to exercise the choice involves action. The distinction between the case at bar and the two cases hereinbefore cited is clearly pointed out in the case of *Sears v. Hassett*, 111 Fed. (2d) 961 C.C.A. 1. There a real estate trust was established to simplify the holding of the legal title to certain real property and to facilitate the sale and disposition of the property. Two questions were presented:

1. Whether or not the trust was an association taxable as a corporation under the income tax law; and,
2. Whether or not it was subject to the payment of capital stock taxes.

The Circuit Court of the First Circuit held that, although the trust was taxable as an association under the income tax law since it had the *power* to do busi-

ness, it was not subject to the capital stock tax for the reason that although it had the *power*, it was *not carrying on or doing business* within the meaning of the capital stock tax statutes. In so holding the Court spoke as follows:

“this is an excise tax not on the privilege of doing business during the year but ‘with respect to carrying on or doing business for any part of such year’. As the court held in *United States v. Emery, Bird, Thayer Realty Co.*, 237 U.S. 28, 32, 35 S. Ct. 499, 501, 59 L. Ed. 825, ‘The question is rather what the corporation is doing than what it could do’. In the case at bar the trustees many years ago had sold all the parcels of real estate but one; during the tax years now in question they were not engaged in real estate operations nor in the business of buying and selling securities. They acted merely as lessors of a single building under a long-term lease to S. S. Kresge Co. The lessees assumed all the burden of management, operation, upkeep and insurance, and paid the trustees a net rental plus taxes. The trustees received the rent, paid the taxes and mortgage interest, added semi-annually to a time deposit with the Massachusetts Hospital Life Insurance Co. for the purpose of building up a fund to pay off the mortgage at the expiration of the lease, and distributed the remainder of the rental income to the beneficiaries quarterly. In 1936 and 1937 the trustees were incidentally engaged in litigation with the lessee as to the right of the latter to terminate its liability by assignment of the lease.

It is recognized that ‘The case is exceptional in which the activities of a corporation for profit

do not amount to doing business within the meaning of the Act'. Article 42, Treasury Regulations 64 (1936 ed.). Article 43 of these Regulations recognizes as one of the exceptional cases 'the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property'. In Article 32 of Treasury Regulations 64 (1934 ed.) it is said: 'The leasing of all the property of a corporation whereby it divests itself of all control and management thereof, or the sale of all the property of a corporation and the reduction of its activities to the mere collection of the proceeds of the sale on an installment plan, are other instances of retirement from business'.

We think the facts of the present case fall within *McCoach v. Minehill Ry. Co.*, 228 U.S. 295, 33 S. Ct. 419, 57 L. Ed. 842. See also *Zonne v. Minneapolis Syndicate*, 220 U.S. 187, 31 S. Ct. 361, 55 L. Ed. 428; *United States v. Emery, Bird, Thayer Realty Co.*, 237 U.S. 28, 35 S. Ct. 499, 59 L. Ed. 825. In the *McCoach* case a railway corporation had leased its road to another company and had retired completely from the maintenance and operation of the road. It maintained its corporate organization and was ready to resume possession of the property at the expiration of the lease. It collected and distributed to its stockholders the rental from the lessee. It also maintained a so-called contingent fund which involved considerable activity in investment and reinvestment in securities yielding an annual in-

come of over \$24,000. The court held that the corporation was not 'doing business' within the meaning of the statute. The dissenting justices thought that the investment activities of the corporation should be considered 'doing business' for profit. In this respect the McCoach case was a stronger one for the Government than the case at bar, where the trustees were not engaged in managing investments but merely made periodic deposits with the Massachusetts Hospital Life Insurance Co. to build up a fund with which to pay off the mortgage at the termination of the trust. The McCoach case has been distinguished on its facts in later cases. *Von Baumbach v. Sargent Land Co.*, 242 U.S. 503, 37 S. Ct. 201, 61 L. Ed. 460; *Edwards v. Chile Copper Co.*, 270 U.S. 452, 46 S. Ct. 345, 70 L. Ed. 678. It has not, however, been disapproved, and we must accept it as a binding authority. See *Kingkade Hotel Co. v. Jones*, D.C. 30 F. Supp. 508.

It follows that the district Court should have given judgment for the appellants in the amount of the capital stock taxes paid for the years in question, plus interest.

In the first case the judgment of the district court is affirmed. In the second case the judgment of the district court is vacated and the cause remanded to that court for further proceedings in conformity with this opinion."

If the distinction between the power to do business and the act of doing business is borne in mind, it is clear that appellant is not subject to the capital stock tax heretofore collected by appellee.

A corporation whose only business is collecting regular monthly rental or royalty payments from its lessees and distributing the proceeds to its shareholders, is not subject to the tax imposed upon corporations actually conducting business. It is the settled rule of the decisions of the Federal Courts that corporations whose sole activity is of this character shall not be subject to the declared value capital stock tax.

It is therefore respectfully submitted that judgment herein should be reversed with instructions to the District Court to enter judgment for plaintiff as prayed.

Dated, San Francisco,

November 2, 1942.

Respectfully submitted,

LOUIS E. GOODMAN,

LOUIS H. BROWNSTONE,

Attorneys for Appellant.

No. 10,253

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

SECTION SEVEN CORP. (a corporation),
Appellant,

VS.

CLIFFORD C. ANGLIM, Collector of Internal Revenue for the First District of California,
Appellee.

On Appeal from the District Court of the United States
for the Northern District of California.

BRIEF FOR APPELLEE.

SAMUEL O. CLARK, JR.,
Assistant Attorney General,

SEWALL KEY,

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Special Assistants to the Attorney General,

FRANK J. HENNESSY,
United States Attorney,

ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Appellee.

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DEC - 7 1942

PAUL P. O'BRIEN,
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Appellee.

On Appeal from the District Court of the United States
for the Northern District of California.

BRIEF FOR APPELLEE.

OPINION BELOW.

The opinion of the District Court (R. 7-8) is not
officially reported.

JURISDICTION.

This is an appeal from a judgment entered April 27, 1942, by the District Court. (R. 11-12.) The action arose under the internal revenue laws of the United States and is for recovery of capital stock taxes paid for the taxable period ended June 30, 1939, with legal

interest from the date of payment. The jurisdiction of the District Court was invoked under the provisions of Section 24, Twentieth, of the Judicial Code, as amended. The case is brought to this Court by notice of appeal filed July 18, 1942. (R. 12.) The jurisdiction of this Court is invoked under the provisions of Section 128 (a) of the Judicial Code.

QUESTION PRESENTED.

Whether taxpayer corporation was carrying on or doing business during the taxable period within the meaning of the applicable capital stock tax law, Section 601 of the Revenue Act of 1938.

STATUTE AND REGULATIONS INVOLVED.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 601. CAPITAL STOCK TAX.

(a) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

* * * * *

Treasury Regulations 64 (1938 ed.):

ART. 41. *Nature and rate of tax.*—The tax is an excise tax imposed with respect to carrying on or doing business during a taxable year ending

June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not upon the business itself and is imposed upon each corporation with respect to carrying on or doing business and not upon each business carried on. If more than one corporation is engaged in carrying on a single business, each must file a return and pay the tax. The tax is imposed at the rate of \$1 for each full \$1,000 of the adjusted declared value of the capital stock. The tax may not be apportioned under any circumstances. If a corporation is engaged in business for any portion of a taxable year, liability for the tax is incurred for the entire taxable year.

ART. 42. *Doing business.*—The term “business” is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which engages in activities ordinarily carried on for profit is doing business. It is immaterial whether the activities result in a profit or a loss, or whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of

the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

ART. 43. *Illustrations.*—(a) *General.*—In general “doing business” includes any activities of a corporation whether it engages in—

(1) buying, selling, manufacturing, developing, financing, speculating, or otherwise dealing in or managing, property of any description;
* * * * *

(3) leasing or managing properties, collecting rents or royalties;
* * * * *

(7) leasing all its properties to another without divesting itself of all control and management of the properties under such terms that it keeps the properties in repair, or engages in other activities necessary to enable the lessee to utilize the leased properties, regardless of whether such activities are performed on behalf and under the order of the lessee or whether such acts are of major importance; or

(8) any other activities coming within the ordinary and natural signification of the term “carrying on or doing business”.

(b) *Exceptions.*—Ordinarily the exceptions to “doing business” are restricted to limited activities of a corporation. For example—

(1) A corporation is not subject to the tax if its corporate powers are limited to the mere owning and holding of property and the distribution of its avails, or, although incorporated for the purpose of doing business, if it has retired from the business for which it was organized and has

reduced its activities to the mere ownership and holding of property, the distribution of its avails, and doing only such acts as are necessary to the maintenance of its corporate existence and the private management of its purely internal affairs. However, a corporation which has retired from its principal business is subject to the tax if, nevertheless, it engages in other business activities or maintains its organization for the purpose of continued effort in the pursuit of profit or gain.

STATEMENT.

This action was submitted upon oral and documentary evidence (R. 8) upon which the District Court made findings of fact and conclusions of law (R. 8-11). The facts as shown in the statement of evidence (R. 14-63), and the District Court's findings (R. 8-10), may be summarized as follows:

The appellant taxpayer corporation was incorporated under the laws of California in November, 1937, for the purpose of acquiring interests of tenants in common in Section 7, Township 20, Range 16 E., M. D. B. & M., Fresno County, California. (R. 9.)

In the year 1911, legal title to the property stood in the name of Mercantile Trust Company and subsequent to 1911, equitable title belonged to a number of different owners. (R. 14-15.) Prior to 1937, every member of a committee which had been appointed by the owners to direct the disposal of the property by Mercantile Trust Company had died. (R. 15.) Title to the property had become highly confused. (R. 15.)

In order to clear title to the property, it was necessary to bring a partition suit. (R. 15.) In 1937 a company offered to lease the property (R. 58) and the taxpayer was organized to take title to the property and make the lease (R. 15, 58). The taxpayer executed an oil lease on one-half of the property during 1937, although title to the property was not yet clear. (R. 58.) As a result of the partition suit, the property was partitioned in kind and the taxpayer corporation acquired five-sixths of Section 7 and one-sixth was partitioned to an owner who did not convey his interest in the land to the corporation. (R. 59.) The private owners who transferred five-sixths of the property to the taxpayer received stock in the corporation therefor. (R. 59.) On June 3, 1938, a new lease was made covering the entire five-sixths of Section 7, acquired by the taxpayer. (R. 59.) A copy of the lease is set forth in full as "Plaintiff's Exhibit No. 1". (R. 16-45.)

Under the terms of the lease, the lessee, Seaboard Oil Company of Delaware, was granted the exclusive right to explore for, drill for, produce, treat, sell, etc., all oil and gas, asphaltum, and other hydrocarbons therein for a period of twenty years and for as long thereafter as oil, gas, etc. continued to be produced. (R. 9.) The lessee agreed to pay a royalty on all oil produced equal to $\frac{1}{6}$ th of its value and a $\frac{1}{6}$ th part of the net proceeds of all gas produced and sold. (R. 9.) The lease gave the lessor the option of receiving the oil royalties not in cash, but delivered in tanks on the leased premises provided that sixty days' notice of the exercise of the option was given. (R. 9.) The option

could be exercised once during the year, and in the absence of exercise, the lessee would pay the royalties in cash. (R. 9.) The lease provided that the possession by the lessee of the land should be exclusive, except that the lessor reserved the right to occupy the land or to lease it for agricultural, horticultural, or grazing uses, which should not interfere with the rights or operations of the lessee. (R. 18.)

The lessee agreed to commence drilling operations on the land within one year and to prosecute the same with reasonable diligence until oil or gas was found in paying quantities, or to a depth at which further drilling would be unprofitable. (R. 23.) It was provided that the lease should remain in effect if the lessee, within ninety days of abandoning drilling of any well, should commence drilling another. (R. 25.) It was further provided that if oil or gas was found in paying quantities in any well drilled by the lessee, that the lessee should continue to drill additional wells until there should be completed on said land as many wells as would equal the total acreage leased divided by twenty. (R. 24-25.) The lease provided that the lessee must drill off-set wells in the event producing wells were drilled on adjoining properties. (R. 28-30.)

The taxpayer, lessor, agreed to pay all taxes on the land as such and on its improvements and on its oil stored on the leased land and one-sixth of the taxes assessed against the petroleum mineral rights in the land then retained by the lessee. (R. 30-31.)

It was provided that the lessor may at all reasonable times examine the land, the work done and in progress

and the production therefrom, and may inspect the books kept by the lessee in relation to the production from the land, to ascertain the production and the amount saved and sold therefrom. The lessee agreed, on written request, to furnish the lessor copies of logs of all wells drilled by the lessee. (R. 31.)

It is provided that the lessor might terminate the lease for violation of any of its terms unless remedied within ninety days after written notice from the lessor so to do. (R. 33.)

Drilling was done pursuant to the terms of the lease and oil was found in September, 1938. (R. 10.) Oil continued to be produced, and by June 30, 1939, the taxpayer had received oil royalties amounting to \$29,409.29 and gas royalties amounting to \$22.35. (R. 10.) The taxpayer, during the taxable period involved, received no other income save a nominal sum for rights of way given pursuant to the custom of the industry. (R. 10, 58.)

The option to take oil in kind, instead of cash royalties, has never been exercised by the taxpayer. (R. 57.) Cash royalties only were received. (R. 57.) The lessee forwarded to the taxpayer a statement of royalties, plus a check for the previous month's royalties on the twentieth day of the succeeding month. The royalty statement shows the amount of the production of oil and gas, the amount of the sales of oil and gas and the amount of royalties. (R. 57.) If the taxpayer desires, it may check or examine the actual production records. (R. 57.) The royalties received were distributed as dividends to the shareholders. (R. 56.)

The corporate activities of the taxpayer were exercised through its officers and board of directors. It had no regular employees. Its expenditures consisted of miscellaneous expenditures for telephone and office supplies, taxes, and fees of accountant and attorney. (R. 10.) For the taxable period ended June 30, 1939, the taxpayer's total income was \$29,431.64 and its total expenses were \$10,092.36. (R. 53.)

The taxpayer filed its capital stock tax return for the year ending June 30, 1939, and paid a tax of \$1051. On November 18, 1939, a claim for refund was made on the ground that the taxpayer was not doing business during the year. The claim was rejected. (R. 10.)

Upon the above facts, the Court rendered the following conclusions of law (R. 10-11):

(1) That plaintiff was doing business under the rule applied in *Kettleman Hills Syndicate v. Comm'r.*, 116 Fed. (2d) 382; *United States v. Trust No. B. I.*, 35, *Etc.*, 107 Fed. (2d) 22.

(2) That judgment should be entered for defendant, with costs.

SUMMARY OF ARGUMENT.

The taxpayer was carrying on or doing business within the meaning of the capital stock tax law. Its activities were within the literal wording of the Treasury Regulations which give as an illustration of a corporation doing business one that engages in "leasing or managing properties, collecting rents or royalties". The regulation is applicable and valid.

The lease entered into by this taxpayer had many conditions for continuance, such as requirements that new wells be drilled and that offset wells be drilled. To protect itself, the taxpayer must have seen to it that the conditions were met and engaged in business in doing so. The amounts of royalties must have been checked and that also would be a business activity. The decision as to whether royalties should be taken in cash or in oil was also a business activity.

ARGUMENT.

THE TAXPAYER WAS CARRYING ON BUSINESS WITHIN THE MEANING OF THE CAPITAL STOCK TAX LAW.

This Court considered the question of doing business for the purposes of the capital stock tax in the recent case of *United States v. Hercules Mining Co.*, 119 F. (2d) 288, certiorari denied, 308 U. S. 617, in which the corporation there involved was held liable. In that case it was said (pp. 290-291):

The tax is assessed upon the privilege of doing business in a corporate capacity. What constitutes doing business? The courts have wrestled with the question many times but no formula has been deduced to fit all situations; and the decision in each case must necessarily hinge upon the particular facts. As defined in the leading case of *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 37 S. Ct. 201, 204, 61 L. Ed. 460, the word "business" means "that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit."

Regulations promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under the several capital stock tax laws have attempted to show by illustrations the circumstances under which corporations are considered to be doing business or not to be doing business. Among the illustrations of a corporation doing business is Article 43 (a) (3) of Regulations 64 (1938 ed.), as follows: "leasing or managing properties, collecting rents or royalties;". This case obviously falls within the literal wording of the regulation. In the recent case of *Magruder v. Washington, B. & A. Realty Corp.*, 316 U. S. 69, decided April 13, 1942, the Supreme Court had under consideration the applicability and validity of another subsection of the regulations illustrating corporations doing business. It was held at pages 72-74:

The regulation, Article 43 (a) (5), provides:

"Art. 43. *Illustrations.*—(a) *General.*—In general 'doing business' includes any activities of a corporation whether it engages in——

* * * * *

"(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;"

If the regulation is both applicable and valid, respondent manifestly cannot prevail.

On the question of applicability there can be no doubt, for the language of the regulation precisely describes respondent's activities. We find without substance respondent's assertions that Article 43 (b) (2) is inconsistent with Article 43 (a) (5) and that it more exactly fits the facts of this case. During the period in question, respondent not fall into that state of quietude, covered by the specific language of Article 43 (b) (2), in which it was merely owning and holding specific property and distributing the resulting proceeds. See *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; cf. *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 516-17. On the contrary, respondent was actively engaged in fulfilling the purpose of its creation, the liquidation of its holdings for the best obtainable price.

Article 43 (a) (5) is both a contemporary and a long standing administrative interpretation, having been in effect in substantially the same form since 1918, except for the period from 1926 to 1933 when the tax was not imposed. We are of opinion that it is valid, as well as applicable. The crucial words of the statute, "carrying on or doing business," are not so easy of application to varying facts that they leave no room for administrative interpretation or elucidation. To be sure, in many, if not in most instances, the factual situation will be so extreme as to leave no doubt whether a corporation is doing business or not. But the nuances of facts between the two extremes have produced a nebulous field of confusion which has been recognized by courts striving to fit close cases into one category or the other. Interpretative regulations, such as Article

43 (a) (5), are appropriate aids toward eliminating that confusion and uncertainty. Cf. *Helvering v. Wilshire Oil Co.*, 308 U. S. 90, 102; *Textile Mills Securities Corp. v. Commissioner*, 314 U. S. 326.

It would seem that the same reasoning is applicable to the present case and the regulation should be held applicable and valid, although the exact wording of Article 43, (a) (3) is not found in the regulations pertaining to the capital stock tax earlier than the 1936 edition.

Aside from the regulation, it would seem that this taxpayer's activities were such as to constitute doing business as business is generally conceived. Of course, it is established law that a corporation which leases all of its property for a long term and surrenders all control over it to the tenant and merely collects and distributes the rentals is not taxable as a corporation doing business. *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; *United States v. Emery*, 237 U. S. 28. But in such cases the amounts of rental were fixed, the leases were for definite long periods and the lessees were not required to improve, develop or exploit the properties. Here the term of the lease was hedged about by many conditions such as the requirements of continuous new well drilling, the drilling of offset wells, etc. To protect itself the taxpayer must have seen to it that the conditions were fulfilled and that, we believe, is a business activity. Likewise, the taxpayer must have used some diligence in verifying the

correctness of the royalties received, again a business activity. Speaking of a somewhat similar situation, this Court held in the case of *United States v. Trust No. B. I., 35, Etc.*, 107 F. (2d) 22, at page 24:

Each of the leases shaped the duties of the tenant with respect to the development and exploitation of the petroleum deposits. They required wells to be drilled in the lessor's land until a certain number was reached, and for their care and continued pumping as long as the oil therefrom was saleable, above a minimum fixed price.

Obviously, in making leases with such requirements from its lessees, the owner of the land is engaged in a creative enterprise for profit, just as it is engaged in such a creative enterprise when it stores, settles and transports the oil to its buyers.

With respect to the taxpayer's option to take royalties either in oil or cash as constituting doing business, the following quotation from this Court's opinion in the case of *Kettleman Hills R. S. No. 1 v. Commissioner*, 116 F. (2d) 382, at page 383, is pertinent:

It is thus apparent that the taxpayer has to make the business judgment from time to time concerning the existing continuing production, whether it will be more profitable for the enterprise to exercise one or the other of the options to receive payment (a) in the form of oil, gas or gasoline or (b) in cash. The trust declaration provides that in order that taxpayer "may dispose of" these petroleum products when received in kind it may make "promissory notes" and "evidences of indebtedness * * * necessary in their

judgment to protect or take advantage'' of their acquisition. That is to say, the trust contemplates the taxpayer might store and process the oil, gas or gasoline and dispose of them as was done in *Trust No. B. I. 35, supra*, and gives it in detail the power so to do.

It is our opinion that in making these successive decisions whether it will require the delivery of the royalty product in kind or in cash, the taxpayer is making a succession of business judgments and "is doing business" within the decision of *Morrissey v. Commissioner*, 296 U. S. 344, 360, 56 S. Ct. 289, 80 L. Ed. 263, though through the tax years in question it thought it better business to accept cash rather than the oil products.

Concededly, this taxpayer's activities during the taxable period were not great, but that is not the test. If *any* activities of a business nature are engaged in for profit the tax applies. *Flint v. Stone Tracy Co.*, 220 U. S. 107; *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503; *Harmar Coal Co. v. Heiner*, 34 F. (2d) 725 (C. C. A. 3d), certiorari denied, 280 U. S. 610. Viewed as a whole, we submit that the situation and activities of this taxpayer constituted doing business.

CONCLUSION.

The decision of the District Court was correct and should be affirmed.

Dated, December 7, 1942.

Respectfully submitted,

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No. 10,253

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

SECTION SEVEN CORP. (a corporation),
Appellant,

VS.

CLIFFORD C. ANGLIM, Collector of Internal Revenue for the First District of California,
Appellee.

APPELLANT'S REPLY BRIEF.

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PAUL P. O'BRIEN,
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SECTION SEVEN CORP. (a corporation),
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Appellee.

APPELLANT'S REPLY BRIEF.

Appellee concedes that it is established law that a corporation which leases all of its property for a long term and surrenders all control of its property to the tenant and merely collects and distributes rentals, *IS NOT* doing business and hence is not taxable under I. R. C. 1200. He concedes, by failure to dispute the point, that the test as to whether or not a corporation is subject to the declared value excess profits tax imposed by Section 1200 of the Revenue Code, is whether or not it is *in fact* carrying on or doing business and *not* whether it has the *power* to conduct business. He concedes that appellant's activities during the taxable year were not great but urges that the terms of the

oil lease, Exhibit 1, conferred certain rights upon appellant, that appellant must have seen to it that the conditions of the lease were met, and that it therefore engaged in business. Appellee then cites the cases of *U. S. v. Trust #B-1*, 107 Fed. (2d) 22, and *Kettleman Hills Royalty Syndicate #1 v. Commissioner*, 116 Fed. (2d) 382, in support of his argument, but he does not state, as he did in the lower Court, that these cases are controlling here.

Although the lease, Appellant's Exhibit 1, contains many provisions for the protection of appellant and confers upon the appellant power to do a number of things, there is no evidence in the record that appellant did any of these things. All leases contain provisions protecting the lessor but the *mere existence of these provisions* does not *ipso facto* constitute the act of carrying on or doing business. Appellee confuses the power to carry on or do business with the actual doing of business.

Reduced to essentials, appellant's argument is that a corporation, owning a single piece of oil property, which it has leased under the terms and provisions of the ordinary and usual oil lease, carries on or engages in business by virtue of the existence of the lease regardless of any act done or performed by it under the terms of the lease.

We most respectfully submit that such is not the law.

The activities of appellant hereunder come squarely under the provisions of Treasury Regulation #64, 1938 Edition, Article 43-b-1 (set forth on pages 4 and 5 of Appellee's Brief). Appellant has reduced its ac-

tivities to the mere ownership and holding of the property and the distribution of its avails and doing only such acts as are necessary to the maintenance of its corporate existence and the private management of its purely internal affairs.

Therefore, under the law and the regulations, appellant is *not* carrying on or doing business.

On page 9 of his brief, appellee correctly states that for the taxable period ending June 30, 1939, taxpayer's total income was \$29,431.64 and its total expenses \$10,092.36.

These figures without an explanation are misleading. Of the total expenses of \$10,092.36, \$8,198.38 represented taxes paid; and expenditures other than taxes are as follows:

		\$ 8,198.38
Accountant's fees	\$ 460.75	
Attorneys' fees	1,372.50	
Miscellaneous office expense	25.08	
Stationery and office supplies	12.62	
Telegraph and telephone	23.03	1,893.98
		<hr/>
		\$10,092.36

(R. 53.)

The case of *U. S. v. Hercules Mining Company*, 119 Fed. (2d) 288, cited by appellee on page 10 of his brief, although deciding that the corporation in question was subject to the capital stock tax on the ground that it was carrying on or doing business, involved an entirely different set of facts than the case at bar. Hercules Mining Company had been engaged for many years in

operating a mine and running a mill and concentration plant. The mine and mill were temporarily shut down, but the corporation was engaged in activities in connection with its property looking toward the resumption of mining and milling. The evidence showed that milling was resumed shortly subsequent to the termination of the taxable year in question.

In the case of *Magruder v. Washington B. & A. Realty Corp.*, 316 U. S. 69, a corporation had been formed to liquidate certain terminal properties which had been acquired by bondholders upon foreclosure. The corporation had leased certain of its properties on short term leases and had sold off certain other properties. The question presented was whether or not a corporation engaged in liquidating was carrying on or doing business. The Supreme Court of the United States held that it was so engaged and that the provisions of Article 43-a-5 exactly fitted the situation. The cited case is not in point.

It is respectfully submitted that the judgment herein should be reversed with instructions to the District Court to enter judgment for plaintiff as prayed.

Dated, San Francisco,
December 16, 1942.

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